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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket Nos. R-0491 and R-0511]

Bank Holding Companies and Change in Bank Control; Permissible Insurance Activities For Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rulemaking.

SUMMARY: The Board has adopted, with some modifications, a proposed revision of its Regulation Y dealing with permissible insurance activities, 12 CFR 225.25(b)(8). The Board proposed this revision (49 FR 9215, March 12, 1984) in order to reflect amendments to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("the BHC Act") contained in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320 601; 96 Stat. 1469, 1536-38 (1982)) ("the Garn-St Germain Act"). This regulation seeks to clarify the scope of insurance activities the Board finds to be closely related to banking and permissible for bank holding companies under the Garn-St Germain Act. This revised regulation will replace in a single revised § 225.25(b)(8) (12 CFR 225.25(b)(8)), the current provisions of 225.25(b)(8) dealing with permissible insurance agency activities, and 225.25(b)(9) dealing with insurance underwriting activities.

In addition, on November 18, 1983 (48 FR 53125), the Board invited public comment on a proposal to eliminate the condition contained in note 7 to § 225.25(b)(9) of Regulation Y (12 CFR 225.25(b)(9), n. 7) requiring a showing of positive public benefits, generally in the form of rate reductions, by those bank holding companies applying to engage in the underwriting of credit life, credit accident and health, and involuntary unemployment insurance. The Board in adopting the amended insurance regulation has decided to eliminate this rate reduction requirement.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Sidney M. Sussan, Assistant Director, Division of Banking Supervision and Regulation (202/452-2638), James E. Scott, Senior Counsel, Legal Division (202/452-3513) or Michael J. O'Rourke, Senior Attorney, Legal Division (202/452-3288), or for users of Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3244), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In the Garn-St Germain Act amending section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)(A)-(G)), Congress has determined that insurance agency and underwriting activities are not closely related to banking and thus not generally permissible for bank holding companies under section 4(c)(8) of the BHC Act, except as contained in exemptions A through G of the statute. Moreover, the language of section 4(c)(8) lists the exemptions A through G as exceptions to the "closely related to banking" test, but not to the "proper incident" or public benefits test. *See*, for example, the Conference Report accompanying the Garn Act, S. Rep. No. 641, 97th Cong., 2d Sess. 91 (1982), which states ". . . thus [the Garn-St Germain Act] establishes that the sale of insurance does not, except for the activities subject to the exceptions, meet the 'closely related' test of section 4(c)(8) of the Bank Holding Company Act." The Board must still decide the public benefits issues, however, on a case-by-case basis. The Board has consistently interpreted the insurance exemptions in section 4(c)(8) as defining certain insurance activities for which bank holding companies may apply and which the Board may approve on a case-by-case basis. *See, e.g.*, dissenting views of Representative Patterson, H.R. Rep. No. 84, 96th Cong., 2d Sess. 15-16 (1980).

The Board's revised insurance regulation, § 225.25(b)(8) of Regulation Y, 12 CFR 225.25(b)(8), contains subsections (i) through (vii) which correspond to exemptions (A) through (G) of section 4(c)(8). Since certain of these exemptions deal with underwriting as well as agency activities, the Board has decided, for the purpose of clarity, to define both types of permissible activities in a single insurance provision, 12 CFR 225.25(b)(8). The present §§ 225.25 (b)(8) and (b)(9) will be deleted.

The following commentary is intended to describe and clarify the insurance activities permissible for bank holding companies under each provision of the amended regulation.

1. Activities Permissible Under Exemption A of the Garn Act

In paragraph (b)(8)(i) of § 225.25, the Board has determined that the following activities are permissible for bank holding companies:

(i) *Credit Insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is: (A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and (B) limited to assuring the repayment of the outstanding balance due on the extension of credit [7] in the event of the death, disability, or involuntary unemployment of the debtor.

[7] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full payout leases that meet the requirements of paragraph (b)(5) of this section.

Defining an Extension of Credit

The Board has permitted insurance activities by a bank holding company only with respect to its own extensions of credit and those of its subsidiaries, rather than extensions of credit by unaffiliated bank holding companies. Although some commenters argued that exemption A permits insurance activities with respect to extensions of credit by any bank holding company, the Board believes Congress intended to continue the Board's practice of permitting the sale and underwriting of insurance by a particular bank holding company only with respect to extensions of credit by that company. To decide otherwise would permit bank holding companies to engage in insurance activities in conjunction with extensions of credit by unaffiliated banks only if they are subsidiaries of a holding company rather than independent institutions.

Paragraph (i) of the revised regulation defines an "extension of credit" to

include direct loans to borrowers, the purchase of loans from other lenders, and the lease of real or personal property so long as the leases meet all the criteria contained in § 225.25(b)(5) of Regulation Y (12 CFR 225.25(b)(5)), which defines leases that are "the functional equivalent of an extension of credit." This list is not intended to be exhaustive and the Board will decide on a case-by-case basis whether there are additional instruments that may qualify as extensions of credit for purposes of the sale and underwriting of insurance.

Defining an "Outstanding Balance Due"

Paragraph (i) limits the insurance coverage to the "outstanding balance due" on an extension of credit. As used in the regulation, the term "outstanding balance due" includes principal and interest and reasonable administrative fees outstanding on a loan as well as the balance of payments due in a lease transaction. It does not include the residual value of the leased item since the lessor owns the leased item and the lessee is not obligated to purchase the item by paying the residual value.

A bank holding company may sell or underwrite various kinds of life, disability, and unemployment insurance related to an extension of credit, provided the face amounts of such policies do not exceed the "balance due" on the underlying loans or leases. The insurance may provide for total repayment of the extension of credit upon the death of the borrower or for periodic payments on the extension of credit when the borrower is temporarily disabled or unemployed. Such single or periodic payments may not exceed the balance on the loan and thus provide for additional general life or accident coverage.

While ordinarily such credit-related insurance coverage would be declining term as payments reduce the balance due on an extension of credit, a bank holding company may write or sell a level term policy on non-amortizing loans. Policies written or sold pursuant to this paragraph, moreover, may be individual rather than group policies, and the premiums on such policies may be age-related. The language of exemption A requires only that the insurance guarantee repayment of the outstanding balance due on an extension of credit and not that it be limited to traditional group credit life insurance. While recognizing that the types of insurance permitted under exemption A are "generally underwritten as group policies covering certain classes of borrowers," the Senate Report on Title VI of the Garn Act (S. Rep. No. 536, 97th Cong., 2d Sess. 38 (1982)) (hereinafter "the Senate Report") does not indicate that such a requirement is mandatory.

The Board will continue to require that insurance policies sold or written to cover the "outstanding balance due" insure only named borrowers or lessees of a particular bank holding company. Accordingly, such policies could cover both spouses jointly only if both spouses were actual borrowers or lessees under the terms of the agreement with the bank holding company. The Board limited permissible insurance activities to actual debtors even prior to passage of the Garn-St Germain Act. *Irwin Union Corp.*, 60 Fed. Res. Bull. 138 (1974); *First Bancorp*, 39 FR 7493 (1974). *See also Federal Reserve Regulatory Service*, 4–337 and 4–590.

Paragraph (i) of the amended regulation contains three significant interpretations of the term "extension of credit" in exemption A of Garn-St Germain Act. It permits the sale and underwriting of credit-related life, accident and health, and involuntary unemployment insurance: (1) With respect to lease transactions where such lease transactions are the equivalent of loans, (2) in connection with loans secured by residential first mortgages, and (3) in connection with the servicing of loans originated or purchased by the applicant bank holding company and subsequently sold.

Leases as an Extension of Credit

The amended regulation explicitly permits the sale of life, disability, and involuntary unemployment insurance with respect to a lease transaction, provided the lease is the type of non-operating, full payout lease described as permissible for bank holding companies in § 225.25(b)(5) of Regulation Y (12 CFR 225.25(b)(5). Since the Board has determined that such leases are the "functional equivalent of an extension of credit," it believes that this type of lease is encompassed in the term "extension of credit" as it is used in exemption A of the Garn-St Germain Act. The Board also notes that it has previously authorized the sale of credit-related life and accident and health insurance in connection with leases, and it finds no evidence that Congress intended to overturn the Board's ruling.

The Board's conclusion is supported by a number of commenters who suggest that in practice a lease and a loan are functionally and operationally equivalent. The bank holding company makes the same sort of credit analysis in each case. The bank holding company then uses this credit analysis, the prevailing interest rates, the term of the transaction, and consideration of available financing alternatives in preparing the lease or loan package. In each case the bank holding company is protected by an interest in particular property. The lease and loan both place the bank holding company's funds at risk, require a monthly payment, and generally have a diminishing outstanding balance to complete the transaction. The loan has a down payment and the lease a residual value amount.

The customers of the bank holding company often consider loans and leases as alternative forms of financing. Moreover, the lease and the loan customers of the bank holding company have similar interests they may choose to insure. In both cases, the bank holding company customer or his beneficiary retains the use of a particular piece of property under the terms of a contract without need to make additional payments under the contract at the disability or death of the customer.

The Board does not believe, as some commenters urge, that a bank holding company may engage in the sale of property and casualty insurance on the leased item. This provision of the amended regulation permits only the sale of credit related life, disability and voluntary unemployment insurance on the lease transaction.

Underwriting Credit-Related Home Mortgage Insurance

The second interpretation in paragraph (i) of the amended regulation involving the definition of "extension of credit" is the permissibility of underwriting home mortgage insurance, which insures the repayment of the unpaid balance of a residential first mortgage loan in the event of the death or disability of the mortgagor. As noted above, exemption A of the Garn-St Germain Act permits the sale and underwriting of any type of life, disability, and involuntary unemployment insurance related to an extension of credit by a bank holding company as long as the face value of the insurance policy does not exceed the "outstanding balance due" on the extension of credit. The Garn-St Germain Act does not impose any additional restrictions or limits on the type of life, disability, or involuntary unemployment insurance that may be underwritten or sold.

The Board had previously held that the underwriting of home mortgage insurance is not closely related to banking, in part because it is more like general life insurance than credit life insurance and in part because banks

have not generally underwritten such insurance. *BankAmerica Corporation*, 66 Fed. Res. Bull. 660 (1980); *Seafirst Corporation*, 68 Fed. Res. Bull. 318 (1982). Recently, however, the Board has permitted bank holding companies to underwrite such insurance. *Citicorp/Family Guardian*, 72 Fed. Res. Bull. 339 (1986); *Security Pacific Corporation*, 72 Fed. Res. Bull. 671 (1986). In permitting this activity by order the Board made detailed findings that the underwriting of home mortgage redemption insurance is permitted by exemption A of the Garn-St Germain Act, is closely related to banking, and does not present the possibility of such significant adverse effects that it should not be added to the list of activities permissible for bank holding companies. The Board relied on comments that the differences between home mortgage insurance and credit life insurance have diminished because traditional group credit life insurance sold by bank holding companies on second mortgages has become similar in face amount and actual (rather than contractual) term to home mortgage insurance. In addition, the Board determined that home mortgage redemption insurance is closely related to banking because it supports the lending function. The Board believes, for the reasons set forth more fully in its Citicorp order, that the underwriting of home mortgage redemption insurance is permissible for bank holding companies.

In adopting this position, the Board considered the comments of those that opposed bank holding company underwriting of home mortgage insurance, particularly the argument that Congress intended to codify in exemption A the scope of credit life and disability insurance activities permitted by the Board prior to 1982, when the Board declined to permit the underwriting of home mortgage insurance. The Board has determined that the language of exemption A of the Garn-St Germain Act, however, does not by its terms seek to codify prior Board practice, particularly a limited Board practice articulated in two individual orders.

Since home mortgage insurance underwriting involves a new type of insurance activity that may raise public benefits issues, the Board will require an application or notice from any bank holding company seeking to engage in the activity and will not presume that all companies heretofore engaged in the underwriting of credit life insurance may automatically extend those activities to include the underwriting of home mortgage insurance.

The Board notes that in approving this activity by order the Board has relied on commitments by applicants to inform in writing borrowers who are prospective purchasers of such insurance that home mortgage redemption insurance is not required and that, if desired, it may be purchased from other sources. The Board has also relied on a commitment for written notice to borrowers that the insurance contract may be rescinded at any time after the loan commitment is made and prior to closing. In processing applications to engage in the underwriting of home mortgage redemption insurance pursuant to this amended regulation, the Board, and the Reserve Banks acting pursuant to delegated authority, will continue to require such notices be provided to borrowers. In addition, it will continue to rely on the fact that premiums for such insurance are payable periodically during the term of the extension of credit, so as to increase the borrowers' ability to rescind the insurance and to limit premium financing as an incentive to sell and underwrite such insurance.

Insurance in Connection With Serviced Loans

A third significant interpretation of the term "extension of credit" found in exemption A of the Garn-St Germain Act involves the sale and underwriting of insurance in connection with the servicing of loans. As the Board noted in its proposed rulemaking, the Garn-St Germain Act limits the sale of insurance by bank holding companies in general to insurance related to an extension of credit. The Board may no longer permit the sale of insurance related to the provision of the general financial services offered by a bank, including, for example, insurance on the contents of safe deposit boxes or savings completion insurance on certificates of deposit, Christmas club accounts, individual retirement accounts, or tuition completion plans. Insurance with respect to loan servicing by a bank holding company was the primary type of such insurance previously permitted by the Board as related to financial services.

The Board believes that the term "extension of credit" is used in exemption A to describe transactions in which the funds of the bank holding company or its subsidiaries have been placed at risk, including direct loans or leases or loans that have been purchased. Loans that are merely being serviced by the bank holding company generally would not be covered by this definition. The Board has been persuaded, however, by the comments received to permit bank holding companies to sell credit-related life, accident and health, and involuntary unemployment insurance where a bank holding company has previously placed funds at risk by originating or purchasing loans and thereafter has sold the loans and retained the servicing rights. Of course, the bank holding company must continue to limit its insurance coverage to the outstanding balance due on the extension of credit by the borrower.

The Board notes that to require a bank holding company to cancel insurance that it has sold or underwritten on a loan origination or purchase immediately upon sale of the loan would cause substantial inconvenience for the borrower, the bank holding company, and the purchasers of the loan. It may also result in gaps in insurance coverage and greater cost to the borrower. Such cancellation requirement would also restrict the ability of bank holding companies to compete in the sale and underwriting of any credit-related insurance because the purchaser of the policy would have no control of whether and when it could be cancelled. The Board believes that in conferring the right to sell such insurance Congress must have intended that bank holding companies be able to compete effectively. Therefore, a bank holding company that offers credit insurance for a fixed term should not be forced to alter that contract by reason of the subsequent sale of the loan, particularly the sale in the secondary market where the servicing entity has traditionally been obligated to see that proper insurance coverage is maintained.

The sale and underwriting of insurance on loans being serviced is necessary only where the term of the insurance was originally shorter than that of the loan. The bank holding company selling and underwriting insurance on the loan that it originated and is servicing is, in effect, only extending the term of its original insurance policy to be coterminus with the duration of the loan. It is providing insurance that it could have provided previously. The Board does not believe that Congress intended to prevent a bank holding company lender from renewing insurance coverage on loans it sells but continues to service.

Although a bank holding company may not sell or underwrite insurance in the case where it is merely servicing a loan and it has never placed its funds at risk either by originating or purchasing the loan, the bank holding company is permitted to collect and transmit insurance premiums, act as intermediary

in renewing existing policies or adjusting coverages, and engage in other activities which are incidental to the servicing of loans. The bank holding company may collect a fee for such services, providing that the fee is based upon the provision of the service and is not a premium for insurance sold or underwritten. In that case, the bank holding company is engaging in loan servicing rather than insurance activities.

The Public Benefits Requirement of Credit Life Underwriting

The Board has decided to eliminate its requirement that those bank holding companies applying to engage in the underwriting of traditional group credit life, disability, and involuntary unemployment insurance show a public benefit in the form of a reduction in the premium cost of such insurance below the maximum or prima-facie rate established by the state and/or charged by credit insurance underwriters in the state. The Board imposed the requirement of demonstrating explicit public benefits in 1972 when it added credit life underwriting to the list of nonbanking activities permissible for bank holding companies. The Board imposed this requirement because of its concern that the underwriting of such insurance by bank holding companies presented the potential for certain adverse effects. Moreover, the Board in viewing the rate structure of credit life insurance was not convinced that the underwriting of such insurance on a *de novo* basis by bank holding companies would result in the same positive competitive effects normally associated with *de novo* entry.

During the past 14 years the underwriting of credit life insurance has remained the only permissible nonbanking activity for which the Board has imposed a requirement or condition that effectively determines the fee structure for the activity. This is a matter of concern to the Board because, under authorization of a federal statute, credit insurance rate ceilings are set by the individual states. Moreover, the rate reduction requirement can give the appearance that only lower rates than those permitted by the states are in the public interest or create a public benefit. This may be inappropriate at a time when the states have become increasingly active in reviewing and setting credit life insurance rate ceilings. These policy considerations weigh in favor of eliminating the required rate reduction.

In addition, the requirement appears to have been motivated in 1972 by concerns that are now less significant. With respect to the Board's concern in 1972 about the price structure for credit life insurance, the Board notes that since 1972 a substantial number of states have lowered their rates and have provided for more systematic review and adjustment of such rates based on premiums-to-payout ratios or similar considerations. The Board also had a concern in 1972 that bank holding companies acting as credit life insurance underwriters might unduly pressure consumers to purchase such insurance. Since pressure on the consumer to purchase insurance is more likely to be exerted by an agent at the point of sale rather than by an underwriter, the Board believes that this concern is more properly addressed in connection with the rules regarding agency activities than in the underwriting rules. In this regard, there are appropriate safeguards in place to deal with adverse effects arising out of the sale of insurance, including the anti-tying provision of the BHC Act, 12 U.S.C. 1972(b), and the disclosure requirements of the Board's Regulation Z, 12 CFR 226.4(a)(b)(6) and 226.4(d).[1] The rate reduction requirement, in any case, does not directly address the concerns that motivated the Board in 1972, either by making the price structure for credit life insurance more competitive or by alleviating any basis that might exist for pressure on borrowers to purchase such insurance.

Finally, the general rate reduction requirement falls on all bank holding companies, and only bank holding companies, regardless of how low the rate ceiling might be in the state where the holding company operates. Although there has been no showing that transactions by bank holding company lenders are more likely to result in adverse effects than transactions involving other lenders, bank holding companies are the only lenders that must comply with the rate reduction requirement.

The Board believes that these considerations are adequate to support elimination of the rate reduction requirement. Accordingly, as of the effective date of this regulation, those bank holding companies that currently engage in the underwriting of credit life insurance may charge premiums as permitted by the states without notice of adjustment to the Board.

The Board has been requested to impose a more stringent public benefits requirement by requiring bank holding companies that sell credit life insurance through unaffiliated underwriters to notify and reenroll all borrower/policyholders when changing underwriters. The Board believes that the policyholder's contract rights under state law provide adequate protection and that such a requirement is an unnecessary burden on bank holding companies not required under the "proper incident" standard of section 4(c)(8) of the Act.

2. Activities Permissible Under Exemption B of the Garn Act

In paragraph (b)(8)(ii), the Board has determined that the following insurance activities are permissible for bank holding companies:

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company [8] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to assuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of, a residential manufactured home [9] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that: (1) they are not required to purchase such insurance from the applicant; (2) such insurance does not insure any interest of the borrower in the collateral; and (3) the applicant will accept more comprehensive property insurance in place of such single interest insurance.

[8] "Finance company" includes all nondeposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual States as finance companies and that engage in a significant degree of consumer lending.

[9] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

Definition of Finance Company

The Board's amended regulation differs from the proposed regulation in that it specifically defines a "finance company" to be an entity that does not take deposits and that engages to a significant degree in consumer lending, other than lending secured by first mortgages, as well as any financial institution a state defines as a finance company, provided such an entity

[1] A 1985 consumer survey conducted by the Board at the request of the Board's Consumer Advisory Council suggests that most borrowers who purchase credit insurance would be willing to do so again in the future and that the vast majority of borrowers believed that their decision with respect to such insurance had no effect on the creditor's decision to grant a loan. University of Michigan, Survey Research Center, *Survey of Consumer Attitudes* (December 1985).

engages to a significant degree in consumer lending. Under this provision, therefore, finance companies would include those entities that may be authorized to accept limited types of time or savings deposits under state law but which a state has defined to be a finance company. Since exemption B appears to focus on consumer loans, the regulation requires a qualifying company be engaged in that type of lending to a significant degree as measured by either number of loans, percentage of loans, percentage of loan amounts outstanding or some similar measure. The Board will evaluate the amount of the consumer lending on a case-by-case basis.

The Board has been persuaded by those who commented that Congress in using the term "finance company" was referring to a specific type of entity rather than to all financial institutions that are not banks. The Board believes that finance companies generally are understood to be financial institutions that engage primarily in consumer lending and that ordinarily do not accept deposits. As such, these entities are distinguished from industrial banks, mortgage companies, credit unions, savings banks and other types of financial institutions. If Congress had intended to cover these other institutions, it could have used a broader term, such as "lending subsidiary" or "financial institution." Furthermore, the limitations contained in exemption B as to the size and types of loans with respect to which insurance may be sold is evidence of the intent of Congress to limit the scope of the exemption to traditional finance companies where such loans constitute the primary type of lending.

Type of Insurance a Finance Company May Sell Under Exemption B

An issue under this provision that was raised only by the five insurance agents associations and the Association of Bank Holding Companies involves the type of property insurance a finance company may sell. The Board's proposed regulation suggested that finance companies be permitted under exemption B to sell property and casualty insurance on property that serves as collateral for a loan. This insurance, most commonly sold in automobile or homeowner insurance packages, was authorized by the Board as permissible for bank holding companies and their lending subsidiaries prior to the passage of the Garn-St Germain Act in 1982. A closer reading of exemption B reveals a much more limited scope of permissible insurance activity. Accordingly, this provision of the amended regulation permits finance company subsidiaries of bank holding companies to engage in the sale of single interest property insurance that insures against damage or loss only to the lender's interest in the property that serves as collateral for a loan.

The language of exemption B limits the permissible insurance coverage to "the outstanding balance due on an extension of credit." It does not contemplate general property insurance that covers the entire value of the property, including the balance due the lender and the equity interest of the borrower/owner. The language parallels the "outstanding balance" requirement of exemption A which, as noted above, requires that the insurance not exceed the unpaid amount of the loan. Generally such insurance is declining balance and the only interest in the collateral property that may be insured is that of the lender.

The failure of exemption B to mention casualty insurance provides additional support for this view. Traditional property insurance, such as automobile or homeowners, is virtually always sold in a package with casualty or liability insurance. The absence of any authorization to sell such casualty insurance in exemption B or in the Senate Report (p. 38) is an indication that Congress views the insurance to be sold as limited to declining balance property insurance that protects the lender's interest in the property. The legislative history of exemption B also lends support to the view that exemption B was intended to permit insurance activity only where the insurance was limited to protecting the single interest of the lender.[2]

The Board has also considered whether general public benefits factors are consistent with the sale of single interest insurance by bank holding companies. While lending institutions may require such insurance on loan collateral as a condition of granting a loan to marginal borrowers or to those who are not otherwise insured, concern has been expressed that lenders may unnecessarily require such insurance of otherwise qualified or insured borrowers. Moreover, unsophisticated borrowers may purchase this limited insurance believing it to be comprehensive coverage of their interest in the loan collateral, or they may purchase this coverage despite the fact that it is largely duplicative of previously purchased property insurance.[3]

Congress was aware of these concerns, however, and was persuaded to permit the sale of such insurance by the finance company subsidiaries of bank holding companies. There was testimony before Congress that the sale of such insurance, not generally sold by independent agents, assists marginal borrowers to obtain credit. Property insurance is provided at standard group rates to those living in areas where insurance coverage is difficult to obtain or where the cost on an individual policy would be prohibitive. Such insurance serves as an alternative coverage for risks not covered by "mainstream" insurance companies, such as inventory and floor plan insurance to small businesses in high risk areas. The testimony indicated the ability to offer such insurance is necessary for bank holding company subsidiaries to compete effectively with independent finance companies on the basis of convenience.[4] Exclusion of the sale of single interest insurance would also render exemption B a nullity, since no other insurance is permissible under that exemption.

The amended regulation permits the sale of such insurance, provided that the bank holding company finance company subsidiary does not require such insurance of borrowers who have adequate property insurance on the loan collateral. In addition, the finance company subsidiary would be required to disclose in writing that such insurance, if required, need not be purchased from the lender [5] and that

[2] *Financial Institutions Restructuring and Services Act of 1981: Hearings on S. 1686, S. 1703, S. 1720, S. 1721 Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong., 1st Sess. 155 (1981) (statement of Robert B. Evans, Senior Vice President, National Consumer Finance Association). *Competition and Conditions in the Financial System, Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess., 481 (1981) (statement of The Consumer Credit Insurance Association). *See also* the statement of Robert Reynolds, President, Independent Insurance Agents of America, *id*, 330.

[3] See, for example, *Financial Institutions Restructuring and Services Act of 1981, Hearings on S. 1686, S. 1703, S. 1720 and S. 1721 Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong. 1st Sess., 154 (1981) (statement of the National Consumer Finance Association).

[4] *See*, for example, the testimony of Frederick L. Boehm, Senior Vice President, American Bankers Insurance Company of Florida and James M. Browne, Executive Committee, National Consumer Finance Association, *Bank Holding Company Legislation and Related Issues, Hearings on H.R. 2255, H.R. 2747, H.R. 2856; H.R. 4004 Before the Subcomm. on Financial Institutions Supervision of the House Comm. on Banking, Finance and Urban Affairs*, 96th Cong. 1st Sess., 304–309 (1979).

[5] The requirement is already imposed by Regulation Z, § 226.4(d)(2) if the premium is excluded from the finance charge.

such insurance does not cover the borrower's interest in the property. With these conditions, the public benefits considerations on a general basis would be consistent with approval.

Property Insurance Underwriting Under Exemption B

The final issue raised by some commenters on this provision of the regulation is whether underwriting of single interest property insurance is contemplated in exemption B. Exemption B makes no distinction between acting as agent or acting as principal as is the case in exemptions C, D and F and more obliquely in G. The Board notes, however, that the Senate Report states explicitly (at p. 38) that "the exemption is not intended to permit a finance company subsidiary to underwrite such property insurance." The Board does not believe that the language of exemption B demonstrates clear intent by Congress to permit a change from the Board's past practice of declining to permit bank holding companies to underwrite property insurance.

3. Activities Permissible Under Exemption C of the Garn Act

In paragraph (b)(8)(iii) the Board has determined that the following insurance activities are permissible for bank holding companies:

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that: (A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or (B) has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

"Principal Place of Banking Business" Requirement

The primary issue addressed by the parties commenting on this provision of the regulation is whether the Board should require a bank holding company that seeks to engage in the sale of insurance in a place with a population not exceeding 5,000 to have its principal place of banking business in such a place. The terms of exemption C do not impose such a condition. Indeed, by its terms, exemption C gives the Board the discretion to determine that any insurance agency activity conducted in a place with 5,000 or less in population is permissible for a bank holding company, even if the holding company does not maintain any office in that place. The Board, however, declines to adopt under the closely related to banking standard such a broad authorization since it would be contrary to the general purpose Congress had in mind when enacting exemption C.

The Senate Report (p. 38) does indicate, however, a general intention to conform exemption C both to the Board's existing insurance regulation and to the National Bank Act (12 U.S.C. 92), which permits a national bank to conduct insurance activities in a town of less than 5,000. The Board's current regulation (as interpreted and applied) imposed three requirements on the sale of insurance in a small town. First, the insurance could be sold only in the small town in order to avoid the channeling of business from subsidiaries located elsewhere. Second, the bank holding company must have a subsidiary serving the public operating in the town in order to provide a nexus to the town and to avoid remote operation of an insurance agency. In applying this requirement, the Board has generally approved small town insurance agency activities if the holding company has a subsidiary bank or nonbanking subsidiary engaged in lending operations located in the small town. Finally, the bank holding company must have its banking headquarters or "principal place of banking business" in a small town to limit the size of the bank holding company qualifying to engage in such insurance. 12 CFR 225.25(b)(8) and BHC Letter 201, July 14, 1980.

The Board included this third or "principal place of banking business" requirement to the Board's insurance regulation[6] in response to the decision in *Alabama Association of Insurance Agents* v. *Board of Governors,*[7] which directed the Board, before implementing its existing regulation with respect to insurance sales in towns of 5,000 to make findings "whether the present wording of the regulation would permit remote insurance agency activity . . ." 558 F.2d at 729. The court was concerned that the proposals under review contemplated the sale of insurance in small towns in Alabama and Georgia from central locations in Birmingham and Atlanta.[8]

The National Bank Act, however, imposes slightly different requirements on insurance activities in small towns. While the national bank must have an office in the small town, there is no requirement in the National Bank Act that the national bank be headquartered in a town of 5,000. Thus, both the Board's existing regulations and the National Bank Act require that an institution providing general insurance agency activities in a small town have at a minimum some office in that town, although the office need not be the institution's head office.

Accordingly, the amended regulation explicitly retains the requirement that in order to provide insurance agency activities in a town with a population not exceeding 5,000 the bank holding company must have an office that serves the public in the small town. The amended regulation specifically requires that the office be a lending office in order to provide the bank holding company with a link to the town, to avoid remote operation from a central location of a network of small town insurance agencies, and generally to maintain insurance as a fee generating activity to help sustain a small town lending office as an independent, viable profit center. This is consistent with the purpose of the National Bank Act that insurance agency activities serve as a supplemental source of income for a bank or branch of a bank located in a small town.

The Board also notes that it has traditionally required that a bank holding company engaging in insurance agency activities in a town not exceeding 5,000 limit its solicitation or sales of insurance to the small town and to other areas of less than 5,000 adjacent to the town, in part to preclude the referral or channeling of business from affiliates. *See* BHC 201, *Federal Reserve Regulatory Service* 4–844 (July 14, 1980). This requirement would not preclude the bank holding company insurance agency from selling insurance to those residing outside the community who initiate the transaction at the agency's place of business in the town of less than 5,000, nor would it prohibit advertising in the community newspaper or a telephone book that may serve an area larger than the community of 5,000.

The Board believes that under these limitations, bank holding companies may continue to conduct insurance activities in small towns in a manner consistent with prior Board requirements and with the purposes of the Garn-St Germain Act and the National Bank Act.

The Board does not believe it is necessary to continue to limit bank holding company insurance agency activities in small towns only to those bank holding companies that are headquartered in a small town. While

[6] 44 Fed. Reg. 6505 (Nov. 9, 1979).

[7] 533 F.2d 224 (5th Cir. 1976), modified on rehearing, 558 F.2d 729 (1977), *cert denied,* 435 U.S. 904 (1978).

[8] The court was also concerned that larger bank holding companies might not need the benefit of the revenue from insurance sales in a small town and the Board ought to consider some limitation on the size of the bank holding company eligible to sell such insurance.

the Board's existing regulation has such a requirement, nothing in the legislative history expressly states that *all* of the specific limitations in the Board's regulation must be incorporated into exemption C on a wholesale basis. This is made clear by the fact that the legislative history provides that exemption C was also intended to conform to the provisions of the National Bank Act. As explained above, the National Bank Act, as interpreted by the Comptroller of the Currency, has no similar requirement that a national bank providing insurance agency services through an office in a small town itself be headquartered in a small town.

The Board believes the "principal place of banking business" requirement does not further the purposes of the small town exemption in current law, that is to provide insurance alternatives in a small town and to provide an additional income source for lending operations serving the small town. Moreover, the Board does not believe it appropriate or consistent with the Act to require a bank holding company located in a small town to divest its insurance agency business simply because it is acquired by a bank holding company in a slightly larger town. The ability to provide an effective insurance alternative may depend on having a presence in and knowledge of a small town, but it does not depend on being headquartered there.

Exemption C is not, by its terms, limited to those holding companies of a limited size or those with a lead bank located in a small town. This is in contrast to exemption F in which Congress explicitly provided for general insurance agency powers (except for the sale of life insurance) for small bank holding companies (those under $50 million in total assets). Focusing on the size of the town rather than the size or nature of the bank holding company engaging in the insurance activity is more in accord with the accepted principle that public policy favors the promotion of competition and not the protection of particular competitors.

Since the restrictions imposed in the amended regulation adequately preserve the limited scope of insurance agency activities permitted under exemption C, the Board has declined to impose the "principal place of banking business test," particularly in the absence of any basis for such a requirement in statutory language.

Definition of Place

The amended regulation parallels exemption C in permitting general insurance activities in a "place" with a population not exceeding 5,000. The Board has not defined the term "place," preferring to permit bank holding companies to demonstrate on a case-by-case basis that a particular location qualifies. The reference to the decennial census in exemption C implies that the "place" must be a cognizable political subdivision such as a village, town, municipality, or township for which population figures are available. A bank holding company could engage in the sale of insurance from a single office in a small town and in surrounding larger political subdivisions, provided the total population of all such "places" served by the lending office does not exceed 5,000. A bank holding company must cease its otherwise impermissible insurance agency operations if the "place" is found in a subsequent decennial census to have grown to a population exceeding 5,000.

4. Activities Permissible Under Exemption D of the Garn Act

In paragraph (b)(8)(iv) the Board has determined that the following insurance activities are permissible for bank holding companies:

(iv) *Insurance agency activities conducted on May 1, 1982.* Engaging in any specific insurance agency activity [10] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[11] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations:

(I) In the State in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(II) In any State or States immediately adjacent to such State; and

(III) In any State in which the specific insurance agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982 by such bank holding company or subsidiary.

[10] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[11] For purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

This provision of the regulation parallels exemption D of the Garn-St Germain Act and grandfathers those insurance agency activities in which individual bank holding companies were engaged on May 1, 1982. Under this provision, therefore, a bank holding company or subsidiary thereof may continue to engage in particular types of insurance agency activities that were permissible prior to the passage of the Garn-St Germain Act but which are now prohibited by that Act. A qualifying bank holding company may engage, for example, in the sale of property and casualty insurance on property serving as collateral for loans made by a lending subsidiary of the holding company.

Limitations on Expansion of Grandfather Rights

Exemption D also provides for limited expansion of grandfathered insurance agency activities in order to permit qualifying bank holding companies to remain effective insurance agent competitors. As the Senate Report states (at p. 39): "Without providing such companies with a broadened ability to expand and grow, they would not long survive in a competitive environment." Exemption D suggests certain types of geographic and product line expansion that should be considered permissible for grandfathered insurance agency subsidiaries of qualifying bank holding companies.

Several commenters urged the Board to permit expansion of grandfathered insurance agency activities without restriction. They argued that the language in exemption D that purports to place limits on the expansion of grandfathered activities is merely advisory and not mandatory. They based this view on the language of exemption D and particularly upon the use of the word "including" to introduce the limitations or restrictions on the expansion of grandfathered activities. These commenters argued that the word "including" means that the proposed types of expansion listed in exemption D are not exhaustive but merely suggest possible forms of expansion that the Board might include in its regulation.

The use of the word "including" to introduce lengthy and detailed limitations on grandfathered activities is ambiguous. The legislative history, however, makes it clear that the limits imposed on exemption D with respect to grandfathered activities are to be mandatory rather than advisory. The

legislative history of exemption D as contained in the Senate Report (pp. 39–41) is more detailed than that of any other provision and describes at length the types of expansion that the Board may approve under the terms of the exemption. The detail of the statutory provision and the legislative history indicates that the conditions are not merely advisory, and the Board believes that it may permit only those specific types of expansion of grandfathered activities listed in exemption D.

Expansion of grandfathered activities pursuant to exemption D presents three issues that the Board has resolved in paragraph (iv) of this regulation. Those issues include (1) defining which subsidiaries of a bank holding company may engage in otherwise impermissible insurance agency activities under exemption D, (2) the scope of permissible geographic expansion, and (3) the scope of product line expansion.

Specific Subsidiaries That May Engage in Grandfathered Activities. Exemption D specifically states that a bank holding company may continue to engage in the sale of specific types of insurance sold on May 1, 1982, at existing or new locations only through "the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982 . . . ." Thus, grandfather rights do not inure to the benefit of the entire holding company system by virtue of the fact that a particular subsidiary was engaged in insurance agency activities prior to May 1, 1982. Only the subsidiary of the bank holding company that was engaged in insurance activities on May 1, 1982, or received Board approval to engage in insurance activities prior to May 1, 1982, has grandfather status. The legislative history supports this reading of exemption D. The Senate Report states:

> "The authority to engage in activities under the grandfather amendment only extends to the entity, be that the holding company itself or a subsidiary or subsidiaries thereof, which qualifies for grandfathered activity status. This limitation is intended to prevent a bank holding company from transferring any grandfather rights among the companies within the holding company system . . . ."
> Senate Report, p. 40.

Some commenters suggested that a "grandfathered subsidiary" is limited solely to the types of insurance (or equivalent types) which it sold prior to May 1, 1982. Other commenters argued that the language of the statute should be read to permit a subsidiary that was engaged in *any* insurance agency activity prior to May 1, 1982 to be grandfathered with respect to all insurance agency activities engaged in by any company in the holding company system prior to that date.

The Board believes that the emphasis in the legislative history on the transfer of grandfather rights shows the intent of Congress to prohibit not only the transfer of such rights from "grandfathered" subsidiaries to those affiliates wholly without grandfather rights, but also to prohibit the transfer of grandfather rights with respect to particular kinds of insurance from one "grandfathered" subsidiary to another. Thus, a subsidiary that sold only credit life insurance prior to the grandfather date should not acquire grandfather rights to sell property and casualty insurance solely because an affiliate sold property and casualty insurance prior to the grandfather date. The grandfather rights of a particular subsidiary are limited to the precise activities (or their functional equivalent) engaged in prior to May 1, 1982. As discussed in more detail below, this requirement does not preclude the transfer of grandfather rights in the case of a bona fide merger. *Citicorp*, 69 Fed. Res. Bull. 554, 555 (1983).

A question has been raised whether a subsidiary bank of a bank holding company, or a nonbank subsidiary of such a subsidiary bank, that was engaged in insurance activities on May 1, 1982, pursuant to the provisions of state law may take advantage of the grandfather provisions of exemption D and, if so, whether such an entity must terminate its grandfathered insurance agency activities if it is acquired by a bank holding company without grandfather rights under section 4(c)(8).

The Board notes that resolution of this issue depends in the first instance on the fundamental question of the scope of coverage of the nonbanking prohibitions of section 4 of the Act to subsidiary banks of bank holding companies, an issue which the Board has under review in a separate rulemaking proceeding regarding § 225.22(d) of Regulation Y, (12 CFR 225.22(d) (*See* 48 FR 23520 (May 25, 1983) and 49 FR 794 (January 5, 1984)), and also in connection with the Board's request for comment on what, if any, action it should take in the case of real estate investment and development powers of holding company banks authorized pursuant to state law. (50 FR 4519 (January 31, 1985)). The Board did not seek comment on this issue or those raised by a commenter in the course of this rulemaking.

This rulemaking is limited in scope and is intended only to clarify the extent to which insurance activity is permitted under exemptions A through G of Title VI of the Garn-St Germain Act. In other words, this regulation is intended only to specify what insurance activities are permissible for entities subject to the nonbanking provisions of section 4 of the Act. It is not intended to specify which entities are subject to these provisions, an issue that, as noted, is the subject of separate rulemaking proceedings. Accordingly, the Board has reserved judgment on the issues raised by this comment for consideration in connection with the Board's rulemaking proceedings on § 225.22(d) of Regulation Y and the proceeding on real estate development powers of holding company banks. The issue of whether an entity with grandfather rights under exemption D must terminate those activities if it is acquired by another bank holding company is currently under consideration in the context of a pending application. *See Sovran Financial Corp./Suburan Bancorp*, 72 Federal Reserve Bulletin 276 (1986).

Finally, the Board notes that this rulemaking, which is only intended to clarify the exemptions in Title VI of the Garn-St Germain Act, does not authorize any bank holding company to commence any insurance activity, or to acquire a company with insurance activities, without compliance with the notice and application requirements of section 4(c)(8) of the Act.

Geographic Expansion by a Grandfathered Subsidiary of a Bank Holding Company. A variety of alternatives for geographic expansion were suggested by those commenting on this paragraph of the proposed regulation. Some commenters suggested that the Board should permit a grandfathered subsidiary of a bank holding company (or the holding company itself if it engaged in the insurance activities directly) to expand its grandfathered insurance activities into any new state without restriction. Such a position treats the specific limitations on geographic expansion in exemption D as nonbinding, a position the Board has considered and rejected.

All other commenters agreed that the explicit language of exemption D permits the grandfathered subsidiary of a bank holding company to engage in the sale of insurance in the bank holding company's home state and states adjacent thereto. There was substantial disagreement, however, concerning the scope of additional expansion.

Some commenters argued a grandfathered subsidiary of a bank holding company could expand the specific insurance agency activities in which it engaged prior to May 1, 1982, into any state where any affiliate was engaged in *any* type of insurance activity prior to the grandfather date.

Under this view, a bank holding company subsidiary engaged in the sale of property and casualty insurance on the grandfather date could sell such insurance in any state where an affiliate sold credit life insurance prior to the grandfather date.

Other commenters suggested expansion be permitted only into those states where the grandfathered subsidiary *or an affiliate* sold the specific type of insurance on the grandfather date. Thus, for example, a subsidiary engaged in the sale of property insurance on the grandfather date would expand its activities into any state where an affiliate also sold property insurance on the grandfather date.

Finally, some commenters argued for no geographic expansion, restricting the grandfathered subsidiary to those states where it sold insurance on the grandfather date. The amended regulation adopts the middle position of permitting a grandfathered subsidiary to expand into those states where an affiliate sold the same type of insurance on the grandfather date.

The Board believes unlimited expansion into any state where *any* insurance was sold on the grandfather date is not supported by the language or legislative history of exemption D or by the limited nature of the grandfather provision. The language and legislative history of exemption D emphasize that it is the specific subsidiary that is grandfathered with respect to the insurance activities it conducted prior to May 1, 1982, and not the entire holding company system. Exemption D allows the sale of insurance at new locations of "the *same* bank holding company *or* the *same* subsidiary . . ." (emphasis added). As noted above, the Senate Report is clear in limiting grandfather status to the specific subsidiary that engaged in the activity on the grandfather date (p. 40). If the focus of exemption D is the individual subsidiary and the specific types of insurance sold by that subsidiary on the grandfather date, it is inconsistent to read exemption D as permitting the transfer of the right to engage in insurance activities in a given state to an affiliate that sells only a completely different kind of insurance.

The Senate Report describes exemption D as permitting expansion of a bank holding company's insurance business "within reasonable limits." The exemption "does restrict the locations and scope of grandfathered insurance activities" without restricting the volume of insurance sales. (Senate Report, p. 39). The Board believes it is not consistent with the limited nature of this grandfather provision to permit, for example, a bank holding company subsidiary engaged in the sale of property insurance in one state to expand into the 49 other states where an affiliate may sell credit life insurance. In fact, the legislative history appears to presume that only companies engaged in the sale of property and casualty insurance need be grandfathered, since the sale of credit life insurance is still permitted under exemption A. There appears to be no intention to permit a grandfathered property and casualty insurance subsidiary to expand its locations on the basis of the location of credit life agency subsidiaries.

Accordingly, the Board's final regulation provides that a bank holding company may sell a particular kind of insurance from new or expanded locations only in its home state, states adjacent thereto, and states in which it, or an affiliate, sold that kind of insurance (or insurance that is functionally equivalent) prior to May 1, 1982. The language of exemption D, while limiting the grandfathered activities to those agency activities conducted by the specific grandfathered subsidiary, does allow expansion into states where such specific types of agency activities "were conducted by the bank holding company or any of its subsidiaries on May 1, 1982 . . ." If a bank holding company subsidiary is selling a particular type of insurance in a given state, the Board does not believe there is any regulatory or business purpose served by restricting another grandfathered subsidiary from engaging in the same activity in the same location.

Product Line Expansion. The Board's amended regulation also provides for product line expansion. A grandfathered subsidiary of a bank holding company may seek approval from the Board to engage in the sale of new types of insurance that protect against the same types of risks as, or are otherwise functionally equivalent to, insurance sold on the grandfather date. Although the Board's proposed regulation requested comment upon the issue of whether property and casualty insurance on leased items is the functional equivalent of property and casualty insurance on collateral for a loan, the Board believes that this issue and the other issues of "functionally equivalent" coverage would be more properly addressed on a case-by-case basis in the course of individual applications.

Transfer of Grandfather Rights Among Subsidiaries

The amended regulation specifically provides that a grandfathered subsidiary of a bank holding company (or its successor) may retain its grandfather rights after merger with an affiliate, if such merger is based on legitimate business concerns, *e.g.*, centralized management or increased efficiency, rather than as a means of extending insurance powers. The Senate Report contains language that indicates an intent on the part of Congress to limit the possibility of expansion of grandfather rights simply by means of transferring those rights from one grandfathered subsidiary to the entire holding company system, but the subsequent Conference Report (S. Rep. No. 641, 97th Cong., 2d Sess. 91 (1982)) provides a limited exception to that general rule when it states that "nothing in this title is intended to prevent the transferring of grandfathered insurance activities of the bank holding company to the parent company or to any of its subsidiaries if the transferral is brought about for management or efficiency purposes." The regulation provides that bank holding companies must advise the Board prior to any such merger for legitimate business purposes in order to confirm the transfer of grandfather rights.

Retention of Grandfather Rights Upon Acquisition By Another Bank Holding Company. Prior to adoption of this regulation, the Board had, in limited circumstances, allowed a bank holding company qualifying for certain grandfather rights under exemption D (specifically related to the sale of credit-related property and casualty insurance that was directly linked and limited to extensions of credit by the grandfathered bank holding company and its subsidiaries) to retain those rights and continue to engage in the grandfathered activities after its acquisition by another bank holding company that did not have grandfather rights. The acquiring bank holding company did not, however, gain any grandfather rights with respect to its own subsidiaries. *See BankAmerica Corporation*, 69 Fed. Res. Bull. 568 (1983); *Fuji Bank*, 70 Fed. Res. Bull. 50 (1984).

5. Activities Permissible Under Exemption E of the Garn Act

In paragraph (8)(b)(v) the Board has determined that the following insurance activities are permissible for bank holding companies:

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell: (A) fidelity insurance and property and casualty insurance on the real and personal property used in the operations

of the bank holding company or its subsidiaries; and (B) group insurance that protects the employees of the bank holding company or its subsidiaries.

This provision, which merely restates exemption E of the Garn Act, is of limited applicability. The legislative history indicates an intent on the part of Congress to avoid preempting certain practices permissible under Texas law. Senate Report, at p. 41. The Board received no substantive comments on this provision.

6. Activities Permissible Under Exemption F of the Garn Act

In paragraph (b)(8)(vi) the Board has determined that the following insurance activities are permissible for bank holding companies:

(vi) *Small bank holding companies.* Engaging in any insurance agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (i) and (iii) of this section, and it may not continue to engage in insurance agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

This provision permits bank holding companies with total consolidated assets not exceeding $50 million to engage in general insurance agency activities, except that they may not engage in the sale of life insurance or annuities unless otherwise authorized to do so under subsections (i) and (iii) of this regulation. (These subsections generally permit the sale of credit life insurance or any type of insurance in a town with a population not exceeding 5,000.) The Senate Report (at p. 42) makes it clear that exemption F ceases to apply "if the value of a bank holding company's system assets exceed $50 million." The assets of the entire holding company system rather than those of its bank subsidiaries or its insurance agency subsidiary are determinative for meeting the $50 million limit of this provision.

The regulation requires a bank holding company to cease general insurance agency activities pursuant to this provision within 90 days after the end of the quarterly reporting period in which the bank holding company's total assets exceed $50 million. Since a small bank holding company may not have complete and accurate financial figures until it prepares its quarterly report and since quarterly reports are generally completed several weeks after the end of a quarterly reporting period, the Board believes this 90-day requirement provides a reasonable, minimum time to alter the structure of the bank holding company's insurance activities. Thereafter, the bank holding company may continue to engage in the sale of insurance pursuant to other exemptions.

7. Activities Permissible Under Exemption G of the Garn Act

In paragraph (b)(8)(vii) the Board has determined that the following insurance activities are permissible for bank holding companies consistent with exemption G of the Garn-St Germain Act:

(vii) *Insurance agency activities conducted before 1971.* Engaging in any insurance agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

Agency Activities

In this provision the Board has adopted a position, already articulated in several orders on individual applications, permitting any qualifying bank holding company to engage in general insurance agency activities without restriction as to location or to type of insurance sold. *See First Wisconsin Corporation,* 71 Fed. Res. Bull. 171 (1985); *Norwest Corporation,* 70 Fed. Res. Bull. 235 and 470 (1984). A company qualifies under this provision if it was engaged in insurance agency activities as a consequence of Board approval prior to January 1, 1971. A very limited number of active bank holding companies received such Board approval in the period from passage of the BHC Act in 1956 until January 1, 1971.

The regulation does not limit the insurance agency activities of a qualifying company by requiring that the company engage only in the sale of such types of insurance as it sold prior to 1971 from such locations as it conducted insurance agency activities prior to 1971. As the Board has already stated in the above-cited orders, it does not find any indication in the language of exemption G that Congress intended to limit the insurance agency activities of qualifying companies in any fashion.

To limit the sale of insurance to the types sold prior to 1971 would render exemption G more restrictive than exemption D, which grandfathers those insurance agency activities engaged in prior to 1982. By definition, any pre-1971 insurance agency activities would also qualify under exemption D as pre-1982 activities. Such a limited reading of exemption G, therefore, would render it superfluous for purposes of grandfathering permissible types of insurance agency activity.

Prior to 1971 the Board did not examine individual types of insurance to determine whether the sale of such insurance would be "closely related to banking." Section 4(c)(6) of the Bank Holding Company Act of 1956, the operative nonbanking provision, used the standard of "closely related to the business of banking." *See* Pub. L 84–511, section 4(c)(6); 70 Stat. 137 (1956). Under this "business of banking" standard, the Board considered only whether the entire insurance agency business of a particular bank holding company was conducted in such a manner that it was closely related to the banking business of the applicant bank holding company. As a consequence, the Board did not scrutinize each type of insurance an applicant proposed to sell, and in several cases prior to 1971 the Board approved general insurance agency activities for bank holding companies. *See First Bankstock Corp.,* 45 Fed. Res. Bull. 917 (1959); *Northwest Bancorporation,* 45 Fed. Res. Bull. 963 (1959).

For the reasons set out in its previous order, the Board's regulation permits the limited number of qualifying companies to engage in general insurance agency activities pursuant to exemption G regardless of their precise insurance agency activities prior to 1971. *First Wisconsin Corporation,* 71 Fed. Res. Bull. 171 (1985); *Norwest Corporation,* 70 Fed. Res. Bull. 470 (1984).

Underwriting Activities

Several commenting bank holding companies argued that exemption G also permits qualifying companies to engage in general insurance underwriting activities without restriction. These companies argued that the language of the statute merely speaks of insurance activities rather than insurance *agency* activities as in exemption C, D, and F. The Board has not proposed nor has it adopted a regulation that would permit qualifying exemption G companies to engage in general underwriting activities.

The language of exemption G provides that a company qualifies for grandfather rights only by reason of receiving Board approval to engage in *agency* activities prior to January 1, 1971. The Board believes, therefore, that exemption G is intended to deal only with agency activities. The Board also believes that Congress intended to permit bank holding companies to engage in only the general kinds of activities the Board

permitted prior to 1971. While the Board did permit general insurance agency activities prior to 1971, it permitted only very limited credit-related underwriting activities.

The Board does not believe that Congress intended in a limited grandfather provision to confer on a few qualifying companies broad new powers never before permitted to any bank holding company. The Board had declined prior to 1971 to permit bank holding companies to engage in life insurance underwriting activities (*Transamerica Corp.*, 43 Fed. Res. Bull. 1014 (1957)). In the Board's view, a limited grandfather provision such as exemption G should not be read to permit bank holding companies, which qualify for grandfather rights because they received Board approval prior to 1971 to engage in insurance agency activities, to expand those activities to include general insurance underwriting—an activity the Board has consistently refused to permit under section 4(c)(8).

In any event, even assuming *arguendo* that general insurance underwriting would be exempt from the general insurance prohibition of the Garn-St Germain Act, this does not mean that such an activity would be "so closely related to banking as to be a proper incident thereto" under section 4(c)(8) of the Act, and, as noted, the Board has previously determined that such general insurance underwriting does not qualify under this standard. *NCNB Corporation*, 64 Fed. Res. Bull. 506 (1978).

Applications Required

Several bank holding companies have also suggested that qualifying exemption G companies need not make specific applications to engage in any insurance agency activities. These commenters claim that exemption G removes any qualifying company from the requirement of meeting either the "closely related" or "public benefits" tests of section 4(c)(8) of the BHC Act. As the Board has previously stated, the exemptions contained in section 4(c)(8) are not intended to be dispositive of the public benefits issues raised in particular applications. For the reasons set forth in these orders, the Board will continue to require applications from exemption G companies.

Regulatory Flexibility Analysis—Paperwork Reduction Act. The Board has certified that adoption of this amended regulation dealing with permissible insurance activities for bank holding companies is not expected to have a significant economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activities are closely related to banking and thus are permissible for bank holding companies. The Board is clarifying the scope of insurance activities it considers to be closely related to banking and permissible for bank holding companies, with Board approval. The amended regulation does not impose different or more burdensome requirements than the prior regulation for applications to the Board to engage in such activities, nor does it restrict permissible activities for bank holding companies except in conformance with the requirements established by Congress in the Garn-St Germain Depository Institutions Act of 1982, codified at 12 U.S.C. 1843(c)(8)(A)–(G). To the extent that it eliminates the mandatory rate reduction requirement for bank holding companies applying to engage in credit life underwriting activities, the amended regulation provides for additional flexibility. Similarly, by clarifying the scope of permissible activities, the amended regulation will permit certain additional applications to qualify for more expeditious processing in the regional Federal Reserve Banks under authority delegated by the Board, 12 CFR 225.23.

The amended insurance regulation imposes no additional information collection requirements and imposes no substantial change in the requirements for applications to engage in insurance activities.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For reasons set out in this notice, the Board is consolidating §§ 225.25 (b)(8) and (b)(9) of the Board's Regulation Y (12 CFR 225.25 (b)(8) and (b)(9)), dealing with permissible insurance agency and underwriting activities for bank holding companies, into a single § 225.25(b)(8). Accordingly, the Board revises §§ 225.1(a) and 225.25(b)(8); and removes §§ 225.25(b)(9) and 225.128 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.25(b)(8) is revised to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(8) *Insurance agency and underwriting.* (i) *Credit Insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is:

(A) Directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) Limited to assuring the repayment of the outstanding balance due on the extension of credit [7] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company [8] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to assuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home [9] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that: (*1*) they are not required to purchase such insurance from the applicant; (*2*) such insurance does not insure any interest of the borrower in the collateral; and (*3*) the applicant will accept more comprehensive property insurance in place of such single interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that: (A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or (B) has inadequate insurance agency facilities,

[7] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full payout leases that meet the requirements of paragraph (b)(5) of this section.

[8] "Finance company" includes all nondeposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual States as finance companies and that engage in a significant degree of consumer lending.

[9] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance agency activities conducted on May 1, 1982.* Engaging in any specific insurance agency activity [10] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[11] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations:

(*1*) In the State in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(*2*) In any State or States immediately adjacent to such State; and

(*3*) In any State in which the specific insurance agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982 by such bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell: (A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and (B) group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) *Small bank holding companies.* Engaging in any insurance agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(8)(i) and (iii) of this section, and it may not continue to engage in insurance agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance agency activities conducted before 1971.* Engaging in any insurance agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

§ 225.25 [Amended]

3. Section 225.25(b)(9) is removed and reserved.

4. Section 225.25 (b)(10) and (b)(11) footnotes numbered 8, 9 and 10 are redesignated 12, 13 and 14, respectively.

§ 225.128 [Removed]

5. Section 225.128 is removed.

§ 225.135 [Removed]

6. Section 225.135 is removed.

Board of Governors of the Federal Reserve System, October 3, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-22867 Filed 10-8-86; 8:45 am]

BILLING CODE 6210-01-M

[10] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[11] For purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 60623-6123]

Revisions to the Commodity Control List Based on COCOM Review

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends several List entries in the categories of Electrical and Power-Generating Equipment, General Industrial Equipment, Transportation Equipment, and Electronic and Precision Instruments. These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

Amended entries on the Commodity Control List include:

1203A, with a more detailed description of those "vacuum induction furnaces" controlled for export;

1312A, with a more specific definition of isostatic presses likely to be approved for export to certain countries;

1353A, which now includes models of small waterplane area twin-hull (SWATH) vessels for use in watertunnels;

1364A, which now includes specially designed equipment for the production of SWATH vessels, certain hub assemblies and water-screw propeller systems, as well as specially designed equipment for the production, dynamic balancing and automatic testing of AC-AC synchronous and AC-DC systems;

1416A, which is expanded to include, among other items, SWATH vessels; and

1418A, which now includes a specific list of vehicle components controlled by that ECCN.

In addition, two new entries are added:

1417A, controlling certain submersible systems even when incorporated in a submersible vehicle; and

2418A, manned submersible vehicles that may be discretely operated with an autonomy equal to or greater than 10 hours.

This rule also adds a new Supplement No. 4 to Part 379. This Supplement contains clarifying information on certain technical data and "software" listed in § 379.4(d). Included in the Supplement are software and technical data for automatically controlled industrial systems to produce assemblies and discrete parts, as well as technical data for metalworking manufacturing processes and specially designed software therefor, which was previously contained in § 379.4(d)(16).

EFFECTIVE DATE: This rule is effective October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patti Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature regarding general industrial equipment and transportation equipment, call Bruce Webb, Capital Goods and Production Materials Technology Center, Export Administration, Telephone: (202) 377-3442.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before October 23, 1986 may be exported under the general license provisions up to and including November 6, 1986. Any such items not actually exported before midnight November 6, 1986 require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 53 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 15 CFR Parts 379 and 399

Exports, Science and technology.

Accordingly, Parts 379 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 379 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

PART 379—[AMENDED]

2. Section 379.4 is amended by adding a new paragraph (c) (11), reading as follows:

§ 379.4 General license GTDR; technical data under restriction.

* * * * *

(c) * * *

(11) Moisture and particulate separator systems covered by ECCN 1416A(g), as follows:

(i) Technical data for preventing water leakage around the filter stages; *and*

(ii) Technical data for integrating the components of such a system.

* * * * *

3. Section 379.4 is amended by adding at the end of the introductory text of (d)(16) the parenthetical phrase "(see Supplement No. 4 to Part 379)" and removing paragraphs (d)(16) (i) and (ii); and by revising paragraphs (d) (13) and (17) to read as follows:

* * * * *

(d) * * *

(13) Technical data for floating drydocks, limited to the following:

(i) That portion of the design of a floating dock covered by ECCN 1425A(a) that relates to the incorporation of the three types of facilities described in the NOTE to ECCN 1425A(a); and

(ii) Design, production and use of on-board floating dock facilities covered by ECCN 1425A(b) that permit the operation, maintenance and repair of nuclear reactors;

* * * * *

(17) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (see Supplement No. 4 to Part 379);

* * * * *

4. A Supplement No. 4 is added to Part 379, reading as follows:

Supplement No. 4—Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada

(1) Technical data for metal-working manufacturing processes and specially designed software therefor (§ 379.4(d)(16)):

(i) The following are definitions of terms used in § 379.4(d)(16)):

(A) "Hot die forging" is a deformation process where die temperatures are at the same nominal temperature as the workpiece and exceed 850 K (577 °C, 1,070 °F);

(B) "Superplastic forming" is a deformation process using heat for metals that are normally characterized by low values of elongation (less that 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values;

(C) "Diffusion bonding" is a solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material;

(D) "Metal powder compaction" is a process capable of yielding parts having a density of 98% or more of the theoretical maximum density;

(E) "Direct-acting hydraulic pressing" is a deformation process that uses a fluid-filled flexible bladder in direct contact with the workpiece;

(F) "Hot isostatic densification" is a process of pressurizing a casting at temperatures exceeding 375 K (102 °C, 215.6 °F) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting;

(G) "Vacuum hot pressing" is a process that uses a press with heated dies to consolidate metal powder under reduced atmospheric pressure into a part;

(H) "High pressure extrusion" is a process yielding a single-pass reduction ratio of 4 to 1 or greater in a cross sectional area of the resulting part;

(I) "Isostatic pressing" is a process that uses a pressurizing medium (gas, liquid, solid particles, etc.) in a closed cavity to create equal force in all directions upon a metal powder-filled container for consolidating the powder into a part.

(ii) Technical data covered by paragraph (d)(16) of § 379.4 is as follows:

(A) Technical data for the design of tools, dies and fixtures specially designed for the following processes:

(1) "Hot die forging";

(2) "Superplastic forming";

(3) "Diffusion bonding";

(4) "Metal powder compaction" using:

(i) "Vacuum hot pressing";

(ii) "High-pressure extrusion"; or
(iii) "Isostatic pressing";
(5) "Direct-acting hydraulic pressing";
(B) Technical data consisting of process parameters as listed below used to control:
(1) "Hot die forging":
(i) Temperature;
(ii) Strain rate;
(2) "Superplastic forming" of aluminum alloys, titanium alloys and superalloys:
(i) Surface preparation;
(ii) Strain rate;
(iii) Temperature;
(iv) Pressure;
(3) "Diffusion bonding" of superalloys and titanium alloys:
(i) Surface preparation;
(ii) Temperature;
(iii) Pressure;
(4) "Metal powder compaction" using:
(i) "Vacuum hot pressing":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(ii) "High-pressure extrusion":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(iii) "Isostatic pressing":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(5) "Direct-acting hydraulic pressing" of aluminum alloys and titanium alloys:
(i) Pressure;
(ii) Cycle time;
(6) "Hot isostatic densification" of titanium alloys, aluminum alloys and superalloys:
(i) Temperature;
(ii) Pressure;
(iii) Cycle time.
(2) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (§ 379.4(d)(17)):
(a) "Software" with all the following characteristics:
(1) Specially designed for "automatically controlled industrial systems" that include at least eight pieces of the equipment enumerated in Technical Note (b)(1) to (9) below;

Notes: 1. The "digital computers" of the "automatically controlled industrial system" do not share a common "main storage" but exchange information by transmitting messages through a "local area network".
2. This sub-paragraph (a)(1) does not release from export control "software" in source code.

(2) Integrating, in a hierarchical manner, while having access to data that may be stored outside the supervisory "digital computer", the manufacturing processes with:
(i) Design functions; *or*
(ii) Planning and scheduling functions; *and*
(3)(i) Automatically generating and verifying the manufacturing data and instructions, including selection of equipment and sequences of manufacturing operations, for the manufacturing process from design and manufacturing data; *or*
(ii) Automatically reconfiguring the "automatically controlled industrial system" through reselecting equipment and sequences of manufacturing operation by "real-time processing" of data pertaining to anticipated but unscheduled events; *and*

Note.—This sub-paragraph (3)(ii) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using prestored "part" programs and a prestored strategy for the distribution of the "part" programs.

(b) Technical data for the design of "automatically controlled industrial systems" that will be used with the "software" controlled for export by sub-paragraph (a) above, regardless of whether the conditions of sub-paragraph (a)(1) are met.

Technical Note: For the purposes of paragraph (d)(17) of § 379.4:
(a) An "automatically controlled industrial system" is a combination of:
(1) One or more "flexible manufacturing units"; *and*
(2) A supervisory "digital computer" for coordination of the independent sequences of computers instructions to, from, and within the "flexible manufacturing units";
(b) A "flexible manufacturing unit" is an entity that comprises a combination of a "digital computer" including its own "main storage" and its own "related equipment", and at least one of the following:
(1) A machine tool or a dimensional inspection machine covered by ECCNs 1091A or 1370A;
(2) A "robot" covered by ECCN 1391A;
(3) A digitally controlled spin-forming or flow-forming machine covered by ECCN 1075A;
(4) Digitally controlled equipment covered by ECCNs 1080A, 1081A, 1086A or 1088A;
(5) Digitally controlled electric arc device covered by ECCN 1206A;
(6) Digitally controlled equipment covered by ECCN 1354A or by paragraph (b) of ECCN 1355A;
(7) Digitally controlled equipment covered by ECCN 1357A;
(8) Digitally controlled electronic equipment covered by ECCN 1529A; *or*
(9) A digitally controlled measuring system covered by ECCN 1532A.

Note.—For the definitions of other terms in quotation marks, see ECCNs 1391A or 1565A or Supplement No. 3 to Part 379.

Note.—Sub-paragraph (a) above does not control "software" (in "machine executable form" only) for industrial sectors other than nuclear, aerospace, shipbuilding, heavy vehicles, machine building, microelectronics and electronics. This NOTE does not release from export control design technology specified in sub-paragraph (b) above.

PART 399—[AMENDED]

Supplement No. 1—[Amended]

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by revising paragraph (c) of the List of Equipment Controlled by ECCN 1203A, reading as follows:

1203A Electric vacuum furnances, specially designed components and controls therefor.

* * * * *

(c) "Vacuum induction furnances" with either of the following characteristics:
(1) Incorporating susceptors that:
(i) Are designed to operate at temperature in excess of 2,273K (2,000 °C); *and*
(ii) Have a working diameter greater than 127 mm (5 inches); *or*
(2) Allowing the molten metal to be poured into a mold within the vacuum chamber without breaking the vacuum, and having all of the following characteristics:
(i) A capacity in excess of 2,273 kg (5,000 lbs);
(ii) Designed to operate at pressure lower than 6.67 Pa (6.67 mbar); *and*
(iii) Designed to operate at temperatures in excess of 1,375K (1,100 °C, 2,012 °F);

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by adding a paragraph (a)(3) under the Advisory Note, reading as follows:

1312A Isostatic presses; specially designed dies and molds (except those used in isostatic presses operating at ambient temperatures), components, accessories and controls therefor.

* * * * *

Advisory Note * * *
(a) * * *
(3) Having no facility for hydrocarbon impregnation and removal of resultant gaseous degradation products;

* * * * *

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1363A is amended by revising paragraph (c)(3) of the "List of Equipment Controlled by ECCN 1363A" to read as follows:

1363A Specially designed water tunnel equipment, components and accessories for the design and development of vessels.

* * * * *

(c) * * *
(3) Models of hydrofoil vessels, surface-effect vehicles, SWATH vessels and specially designed equipment and components controlled by ECCN 1416A (a), (b), (c), (e), (f), (g) and (h) for use in water tunnels.

* * * * *

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment),

ECCN 1364A is amended by revising the heading; revising paragraphs (a), (c) and (f); and revising Technical Note 1, to read as follows:

1364A Machinery and equipment for the manufacture of hydrofoil vessel, surface-effect vehicle and SWATH vessel structures and components, and specially designed components and accessories therefor.

* * * * *

List of Machinery and Equipment Controlled by ECCN 1364A

(a) Specially designed equipment for manufacturing anisotropic, orthotropic or sandwich structures controlled by ECCN 1416A(h)(3);

Technical Notes: 1. Anisotropic construction is the use of fiber reinforcing members aligned so that the load-carrying ability of the structure can be primarily orientated in the direction of expected stress.

2. * * *

3. * * *

(b) * * *

(c) Specially designed equipment for the production of water-screw propellers and hub assemblies and water-screw propeller systems controlled by ECCN 1416A(e) and (f);

(d) * * *

(e) * * *

(f) Specially designed equipment for the production, dynamic balancing and automatic testing of AC–AC synchronous and AC–DC systems, sectored disc and concentric-drum rotors for DC homopolar machines.

* * * * *

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1391A is amended by adding a sentence after paragraph (c)(4), reading as follows:

1391A "Robots", "robot" controllers and "robot" end-effectors, and specially designed components therefor.

* * * * *

List of Equipment and "Specially Designed Software" Controlled by ECCN 1391A

* * * * *

(c) * * *

(4) * * *

(For other underwater manipulator mechanisms, see ECCN 1417A.)

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is amended by revising the heading, removing the phrase "(oriented at other than right angles)" from Technical Note 1; by revising paragraphs (c) through (e) of the "List of Equipment Controlled by ECCN 1416A"; by adding paragraphs (f) through (h); and by inserting the Technical Notes 1 through 3 after paragraph (h) (3), reading as follows: 1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

* * * * *

List of Equipment Controlled by ECCN 1416A

(a) * * *

(b) * * *

(c) Small waterplane area twin-hull (SWATH) vessels having underwater hulls whose cross-sectional area varies along the longitudinal axis between points two major diameters from the bow and two major diameters from the stern;

Technical Note.—SWATH vessels are those that maintain buoyancy by means of submerged hulls using slender struts to support the deck and superstructure of the vessel above the waterline.

(d) Vessels incorporating:

(1) Equipment covered by any Item on the U.S. Department of State Munitions List (See Supp. No. 2 to Part 370) or by ECCNs 1485A, 1501A, 1502A or 1510A;

(2) Degaussing facilities; *or*

(3) Closed ventilation systems designed into the vessel that are designed to maintain air purity and positive pressure regardless of the conditions external to the vessel except where those closed ventilation systems are specially designed for and incorporated in the vessel's medical facilities only;

Note.—Sub-paragraph (1) above does not apply to vessels containing equipment included in Advisory Notes to ECCNs 1485A, 1501A, 1502A or 1510A.

(e) Water-screw propellers and hub assemblies, as follows:

(1) Supercavitating propellers rated at greater than 10,000 hp;

(2) Controllable-pitch propellers and hub assemblies rated at greater than 20,000 hp;

(f) Water-screw propeller systems, as follows:

(1) Contrarotating propeller systems rated at greater than 20,000 hp;

(2) Ventilated, base-ventilated and super-ventilated propeller systems;

(3) Systems employing pre-swirl and post-swirl techniques for smoothing the flow into a propeller so as to improve the propulsive efficiency of:

(i) SWATH vessels, hydrofoil vessels and surface-effect vehicles; *or*

(ii) Other vessels whose propeller rotational speed is above 200 rpm, or having propellers with a rating exceeding 50,000 hp per shaft;

(g) Moisture and particulate separator systems capable of removing 99.9% of particles larger than 2 micrometers in diameter with a maximum pressure loss of 1.6 kPa (16 millibar) for gas turbine engine air inlets.

(h) Specially designed components for vessels covered by sub-paragraphs (a), (b) and (c) of this List, as follows:

(1) Advanced hull forms that incorporate any of the following:

(i) Stepped hulls for hyrofoil vessels;

(ii) Hulls for air cushion vehicles with trapezoidal planforms;

(iii) Hulls for surface-effect vehicles with catamaran-like sidewalls;

(iv) Hulls for wing-in-ground effect vehicles;

(v) Underwater hulls and struts for SWATH vessels;

(2) Fully submerged subcavitating or supercavitating hydrofoils;

(3) Light structural components for SWATH vessels, hydrofoil vessels and surface-effect vehicles, constructed using anisotropic, orthotropic or sandwich construction methods;

Technical Notes: 1.* * *

2. * * *

3. * * *

(4) Flexible skirts, seals and fingers for surface-effect vehicles;

(5) Systems for automatically controlling the stability of SWATH vessels, hydrofoil vessels or surface-effect vehicles;

(6) Power transmission shaft systems that incorporate composite material components for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(7) Lightweight, high capacity (K factor greater than 150) gearing (planetary, cross-connect and multiple input/output gears and bearings) for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

Technical Note.—For the K factor, see AGMA tables of K factor values (based on tooth profile, pinion and gear materials and surface endurance limits).

(8) Water-cooled electrical propulsion machinery (motor and generator), including AC–AC synchronous and AC–DC systems, sectored-disc and concentric-drum rotors for DC homopolar machines for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(9) Superconducting electrical propulsion machinery for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

(10) Lift fans for surface-effect vehicles, rated at greater than 400 hp;

(11) Waterjet propulsor systems rated at 3,000 input hp or greater for hydrofoil vessels and surface-effect vehicles.

(See also Categories VI and VIII on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370.)

(For marine gas turbine engines, see also ECCN 1431A.)

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), new entries 1417A and 2418A are added (in numerical order, disregarding the first digit), reading as follows:

1417A Submersible systems, even when incorporated in a submersible vehicle.

Controls for ECCN 1417A.

Unit: Report in "number".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE

Reason for Control: National Security.

Special Licenses Avialable: See Part 373.

List of Equipment Controlled by ECCN 1417A

Submersible systems, as follows, even when incorporated in a submersible vehicle:

(a) Automatically-controlled atmosphere-regeneration systems specially designed for submersible vehicles that, in a single chemical-reaction cycle, ensure carbon dioxide removal and oxygen renewal;

(b) Systems specially designed for the automated control of the motion of a submersible vehicle using navigation data and having closed-loop servo-control(s) so as to:

(1) Enable the vehicle to move within ten meters of a predetermined point in the water column;

(2) Maintain the position of the vehicle within ten meters of a predetermined point in the water column; or

(3) Maintain the position of the vehicle within ten meters while following a cable on or under the sea bed;

(c) Underwater vision systems, as follows:

(1) Television systems (comprising camera, lights, monitor and signal transmission equipment) specially designed for remote operation with a submersible vehicle, having a "limiting resolution", when measured in the air, greater than 500 lines, using IEEE Standard 208/1960 or any equivalent standard;

Technical Note.—"Limiting resolution" in television is a measure of resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart.

(2) Systems specially designed for remote operation with a submersible vehicle employing techniques to minimize the effects of back-scatter, such as range-gated illuminators;

(d) Remotely controlled articulated manipulators specially designed for use with submersible vehicles and having any of the following characteristics:

(1) Systems that control the manipulator using information from sensors that measure force or torque applied to an external object, distance from an external object, or tactile sense between the manipulator and an external object;

(2) Controlled by proportional master-slave techniques or by using a dedicated stored-program computer; *or*

(3) Capable of exerting a force of 250 Newtons or more or a torque of 250 Newton-meters or more and using titanium based alloys or fibrous and filamentary composite materials in their structural members.

(For underwater "robots", see ECCN 1391A.)

Notes: 1. Sub-paragraph (a) controls equipment using light metal peroxides such as KO_2 without controlling the shipment of KO_2 itself.

2. Sub-paragraph (b) does not control automated control systems incorporated in underwater bulldozers of trench-cutters not capable of operating at depths greater than 100 meters and possessing only negative buoyancy.

3. Sub-paragraph (c) does not control television cameras used merely through a porthole.

4. Sub-paragraph (d)(1) does not control systems where force or torque are only measured and then displayed to the operator.

* * * * *

2418A Manned submersible vehicles that may be discretely operated with an autonomy equal to or greater than 10 hours.

Controls for ECCN 2418A.

Unit: Report vehicles in "number"; parts and accessories in "$ value."

Validated Licensed Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1418A is amended by revising the heading and by adding at the end of the entry a "List of Equipment Controlled by ECCN 1418A", reading as follows:

1418A Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed associated systems, equipment, components and materials therefor, including but not limited to equipment described in the list below.

Controls for ECCN 1418A

* * * * *

List of Equipment Controlled by ECCN 1418A

Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed associated systems, equipment, components and materials therefor, including but not limited to the following:

(a) Pressure housings or pressure hulls;

(b) Propulsion motors and thrusters;

(c) Hull penetrators or connectors.

(For syntactic foam, see ECCN 1759A.)

(For hull penetrators for military use, see Category VI on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370.)

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by revising the heading; by revising paragraphs (a)(1) (i) and (ii) introductory text by adding a paragraph (a)(1)(iv); by revising the phrase "hydrophones and/or transducers" in paragraph (a)(2) introductory text to read "hydrophones or transducers"; redesignating the old Note 5 as "6", redesignating (Advisory) Note 6 as "7", and redesignating (Advisory) Note 7 as "8" and by adding a new Note 5, reading as follows:

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnetic geophones), except those systems or equipment listed below.

* * * * *

List of Systems and Equipment Controlled by ECCN 1510A

(a) * * *

(1) * * *

(i) Depth sounders used solely for measuring the depth of water or the distance of submerged or buried objects vertically below the apparatus;

(ii) Horizontally-operated object detection or location systems, having all of the following characteristics:

* * * * *

(iv) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, provided that:

(A) Their control capability is limited to release and basic transponder capabilities;

(B) They are not capable of processing responses from more than four beacons in the calculation of a single point and have neither devices nor software for correcting automatically velocity-of-propagation errors for point calculation, nor any coherent signal processing means;

(C) They are capable only of operating within a range of less than 1,000 meters or, if capable of operating beyond a range of more than 1,000 meters, are not capable of achieving positional accuracy of better (less) than 20 meters when measured at a range of 1,000 meters;

(D) Transducers, acoustic modules or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters; *and*

(E) Beacons therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters, do not have oscillators with a stability greater than 10^{-5} over periods of 24 hours, and do not use complex codes or beamformers that have shaded or formed beams;

(2) * * *

* * * * *

Note.—5. Acoustic systems or equipment controlled for export by this ECCN for use in positioning surface vessels or underwater vehicles are systems or equipment using acoustic travel time differences between beacons operating as responders, transponders or independent transmitters and one or more hydrophones carried by a surface vessel or underwater vehicle.

* * * * *

Dated: October 6, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-22871 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 60621-6121]

Removal of Unilateral Controls; ECCNs 5565D and 4590B.

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. On December 31, 1984, Export Administration published a final rule (49 FR 50608) revising Entry 1565A of the CCL, which controls certain electronic computers and related equipment. That revision superseded export controls in effect under Entries 5565D and 4590B. This rule removes those two redundant entries.

EFFECTIVE DATE: This rule is effective October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and (604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

PART 399—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCNs 5565D and 4590B are removed.

Dated: October 6, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 22872 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket Nos. RM83-8-001 through RM83-8-010; Order No. 440-A]

Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies, Order Denying Rehearing

Issued: October 2, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 440, which revoked the Commission's Statement of Policy in Order No. 448 where the Commission had set forth its determination that the supply of natural gas is sufficient to meet the current and

future needs of the economy. The Commission denies rehearing because it believes its prior determination that the supply of natural gas is sufficient to meet the current and future needs of the economy is correct.

FOR FURTHER INFORMATION CONTACT: Miriam Swydan Pedersen, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC, (202) 357-5417.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 440.[1] The Commission issued Order No. 440, a final rule on the ratemaking treatment of investment tax credits for natural gas pipeline companies on November 27, 1985. That order revoked the Commission's Statement of Policy in Order No. 448,[2] where the Commission had set forth its determination that a supply shortage of natural gas exists, and repealed section 2.67a of the Commission's regulations.[3] Order No. 440 also required natural gas pipelines to treat investment tax credits earned on or after January 1, 1986, in accordance with Part 201 of the Commission's regulations.[4] Prior to the issuance of Order No. 440, the short supply determination permitted natural gas pipelines to retain the benefits of the investment tax credits. Order No. 440's revocation of the short supply determination permits gas ratepayers to share in the benefits of investment tax credits earned on or after January 1, 1986.

Ten requests for rehearing of Order No. 440 were filed on December 26 and 27, 1985.[5] For the reasons discussed below, the Commission denies these requests for rehearing.

II. Background

In 1971, Congress passed the Revenue Act of 1971 which reinstated the availability of investment tax credits and established specific accounting and ratemaking guidelines for those credits generated by public utilities. The Congressional intent in enacting the investment tax credit program was to assist companies in raising capital necessary for modernization and expansion.

Section 46(f) of the Internal Revenue Code[6] (Code) provides four ratemaking options for companies to follow when accounting for investment tax credits. Only three of these options, Option 1, Option 1a, and Option 2 are at issue here. Options 1[7] and 2[8] generally provide for a fair and equitable sharing of the benefits of investment tax credits between the ratepayers and the company shareholders. Option 1a is the exception, and permits companies to retain all the benefits of any investment tax credits earned.[9]

Option 1a is only available to companies where the regulatory body with jurisdiction over those companies makes the determination that the natural domestic supply of the product is insufficient to meet the present and future needs of the domestic economy.[10] The Federal Power Commission (FPC), the Commission's predecessor, issued a Statement of Policy in Order No. 448, where it specifically found that the domestic supply of natural gas was insufficient at that time to meet the present and future requirements of the domestic economy for the purposes of investment tax credits.[11] Therefore, this determination allowed natural gas companies to retain the full benefits of the investment tax credits. Most of the natural gas pipeline companies elected Option 1 in order to qualify for Option 1a treatment.

In Order No. 440, the Commission determined that the supply of natural gas was sufficient to meet both the present and future requirements of the domestic economy, and thus revoked the short supply determination of Order No. 448.[12] With respect to the current gas supply, the Commission found that there exists a current substantial surplus of gas. This decision was based on responses to notices of inquiry concerning the Commission's attempt to develop comprehensive regulation of natural gas in Docket No. RM85-1, which has resulted in Order No. 436 *et seq.*,[13] and on company requests to implement special marketing programs to enable pipelines to sell and transport excess gas supplies. The Commission also noted that this current excess gas supply has been recognized by the courts.[14] Regarding future gas supply, certain commenters asserted that even if a sufficient supply exists for the present, it will not last longer than a few years. The Commission rejected these arguments on the grounds that the gas supply has continued to improve steadily during the 1980s due to effective energy legislation, increased wellhead prices, and consumer conservation. In particular, the Commission cited the documented effects of deregulation, increased prices under the Natural Gas Policy Act of 1978 (NGPA), and recent take-or-pay exposure incurred by pipelines. The Commission stated that the maintenance of a short supply determination in the face of the current excess would not be in the public interest because it requires ratepayers to pay for gas as if it were in short supply when the reality is just the opposite.

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[1] 50 FR 49679 (Dec. 4, 1985); 33 FERC ¶ 61,295 (1985); FERC Stats. & Regs., Reg. Preambles 1982-85, ¶ 30,674 (1985).

[2] 37 FR 2502 (Feb. 2, 1972); 47 F.P.C. 141 (1972).

[3] 18 CFR 2.67a (1985), "Policy with respect to the natural gas shortage as it relates to the Revenue Act of 1971."

[4] 18 CFR Part 201 (1985).

[5] The Interstate Natural Gas Association of America (INGAA); Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Transcontinental Gas Pipeline Corporation; Algonquin Gas Transmission Company; ANR Pipeline Company; Natural Gas Pipeline Company of America; Texas Gas Transmission Corporation; Northwest Alaskan Pipeline Company; Northern Natural Gas Company, Division of InterNorth, Inc.; and Panhandle Eastern Pipe Line Company and Trunkline Gas Company.

[6] I.R.C. Section 46(f).

[7] Under Option 1, the company adopts a rate base method in which it subtracts the actual amount of credit retained by the company from rate base and then adds the amortized investment tax credit amount back into rate base annually over the life of the asset. I.R.C. Section 46(f)(1).

[8] Under Option 2, the company employs a cost-of-service normalization process. The tax expense reflected in the cost of service is reduced by a proportional amount of the investment tax credit and no reduction is made to the rate base. I.R.C. Section 46(f)(2).

[9] Once a short supply determination has been made, a short supply company is no longer allowed to adjust its rate base or cost-of-service for ratemaking purposes to reflect the investment tax credit.

[10] I.R.C. Section 46(f)(1).

[11] 47 F.P.C. 141 (1972).

[12] The Commission issued a Notice of Proposed Rulemaking (NOPR) on February 22, 1985 (50 FR 8138 (Feb. 28, 1985)), in which it proposed to revoke the short supply determination of Order No. 448, on the basis that the current gas supply situation had changed since that of the 1970's. The Commission noted that the election of Option 1 by most of the pipelines might place them in a less favored tax position relative to other regulated companies that elected Option 2. Thus, the Commission requested comments on whether any changes needed to be made in the Commission's accounting or ratemaking practices so that natural gas pipelines received regulatory treatment comparable to that of electric utilities. In the NOPR, the Commission also stated its intention that the application of the proposed rule would be prospective. (*Id.* at 8140)

[13] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408, (Oct. 18, 1985) (Order No. 436), *modified*, 50 FR 52217, (Dec. 23, 1985) (Order No. 436-A) *pet. for review filed sub nom.*, Associated Gas Distributors v. FERC, No. 85-1811 (D.C. Cir., filed Dec. 12, 1985).

[14] 50 FR at 49681 (Dec. 4, 1985); FERC Stats. & Regs., Reg. Preambles 1982-85, ¶ 30,674 at 31,624, *citing* Maryland People's Counsel v. FERC, 761 F.2d 768, 771 (D.C. Cir., 1985); Maryland People's Counsel v. FERC, 761 F.2d 780, 781 (D.C. Cir., 1985).

The Commission noted in Order No. 440 that most pipelines elected Option 1 in order to qualify for Option 1a treatment. The Commission noted that such companies will remain Option 1 companies subsequent to the revocation of the short supply determination, because pursuant to section 105 of the Code,[15] the election is a one-time choice.

With respect to the difference in the benefits received by companies under Option 1 and Option 2, the Commission declined to modify its accounting regulations to equalize those benefits. The Commission noted that the Option 1a pipelines were fully aware that the short supply determination could be revoked, leaving the pipelines in the Option 1 category. The Commission also noted that the option 1a pipelines retained all the benefits of any investment tax credits earned while the short supply determination was in force, while the companies who elected Option 2 did not receive any such benefits. In addition, the Commission found that the effort involved in developing a general model or formula would be disproportionate to the dollars involved in the difference in the benefits. Thus, in the interests of administrative efficiency, the Commission decided to have Option 1 companies account for their investment tax credits according to the methodology already established in the Code.

Regarding the application of the rule, the Commission held that it should become effective on January 1, 1986, consistent with its intention as stated in the NOPR. The Commission found that it would be inappropriate to apply the rule retroactively to pipelines that relied on ratemaking treatment effective before the issuance of Order No. 440 to make investments and to calculate their rates.

III. Discussion

The Commission received ten requests for rehearing. The requests for rehearing raise several arguments. First, petitioners allege that the Commission's revocation of the short supply determination is not supported by substantial evidence and that the Commission's failure to consider studies submitted by INGAA constitutes arbitrary and capricious decisionmaking. Moreover, petitioners assert that the Commission did not accurately focus on the future adequacy of the domestic supply. Second, petitioners allege that according to section 46(f)(1) of the Code, the Commission lacks the authority to revoke the short supply determination. Third, petitioners assert that the Commission erred by not considering the proposed alternative to permit pipelines to retain the full benefit of investment tax credits on investments for supply related facilities. Fourth, petitioners claim that the Commission should have equalized the benefits of Option 1 and Option 2, or permitted the pipelines to do so on a case-by-case basis. Fifth, petitioners argue that the rule should apply on a prospective basis only to facilities certificated after January 1, 1986, or, if facilities were constructed under blanket authority, where construction commenced after January 1, 1986. Finally, Northwest Alaskan Pipeline Company (Northwest Alaskan), in addition to raising similar gas supply related issues to those noted above, raises certain issues with respect to the treatment of investment tax credits related to the Alaska Natural Gas Transportation System (ANGTS).

A. Substantial Evidence Supports Order No. 440

INGAA, and the other petitioners, have submitted arguments and data against the revocation of the short supply determination identical to those included in their comments to the NOPR. The only argument that has not been previously considered and rejected by the Commission is INGAA's assertion that Order No. 440 was not based on substantial evidence because it neglected to consider the data submitted by INGAA. INGAA, in its initial comments to the NOPR and request for rehearing, supports its contention that the current surplus of natural gas will cease to exist in the near future with reports published by the Department of Energy (DOE) and the Energy Information Agency (EIA). Contrary to INGAA's assertion, the Commission fully addressed the concerns of INGAA in Order No. 440. Although it did not refer to the DOE and EIA studies by name, the Commission did address the substance of INGAA's comments.[16] In response to INGAA and other commenters, the Commission relied upon documented evidence that the combined effects of deregulation under the NGPA, increased wellhead prices, and consumer conservation will result in a sufficient supply in the future.

It has been recognized repeatedly by the Commission and the courts that the industry is faced with a significant gas supply excess, such that pipelines have incurred take-or-pay exposure. It is this widely acknowledged surplus which led the Commission to initiate special marketing programs to permit pipelines to develop spot markets for surplus gas. In an order authorizing such a program,[17] the Commission stated that its decision was grounded on the fact that there was a surplus in the market, a fact which the Commission noted was undisputed by the parties to the proceeding. In *Maryland Peoples Council v. FERC*,[18] the court stated that "[F]actors ranging from the increased wellhead prices and impending total decontrol, to greater energy conservation, have turned the natural gas shortages of the 1970's into a natural gas surplus." [19] In a companion case, the Court also recognized the existence of a surplus, and cited the very DOE and EIA studies relied upon by INGAA.[20] In short, the Commission fully addressed the concerns of INGAA in Order No. 440, and there is no need to repeat that discussion here. In the face of this widely acknowledged surplus, it would be against the public interest to continue the short supply determination. INGAA has not shown that the trends which resulted in the current gas supply excess will not continue into the future, and its request for rehearing on this point is denied.

B. Commission Authority To Revoke the Short Supply Determination

Petitioners allege that the Internal Revenue Code precludes the pipelines from sharing the benefits of the investment tax credits with ratepayers. INGAA states that the Commission does not have the authority to revoke the short supply determination because the Code does not expressly permit such an action. Thus, INGAA proposes to keep the benefits of the investment tax credits even if the Commission finds there is an adequate supply of natural gas.

Petitioners' arguments are seriously deficient on several grounds. The Code expressly granted regulatory agencies the authority to institute a short supply determination if they so wished. The decision as to whether to make such a determination was left to the Commission's authority and its expertise. Implicitly, this includes the power not to make such a determination, or, relying on its expertise, to revoke it. Therefore, it is unnecessary for the Code to include language expressly permitting the revocation of a short supply

[15] I.R.C. Section 105.

[16] 50 FR at 49681 (Dec. 4, 1985); FERC Stats. & Regs. ¶ 30,674 at 31,624.

[17] Tenneco Oil Co., *et al.*, 26 FERC ¶ 61,030 (1984).

[18] 761 F.2d 768 (D.C. Cir., 1985).

[19] Id. at 771.

[20] 761 F.2d 780, 781 (D.C. Cir., 1985).

determination. In addition, the provisions of the Code do not include language which expressly prohibits the Commission from revoking a short supply determination. More importantly, INGAA's suggestion that it retain the benefits of the investment tax credits despite the existence of a gas surplus is clearly without merit. Option 1a, which permitted the pipelines to keep the benefits of the investment tax credits in the past was expressly conditioned upon the Commission finding of a short supply determination.

C. Application of the Exemption for Supply Facilities

Petitioners' assertions that the Commission should consider its alternative of permitting pipelines to retain the benefit of investment tax credits for supply related facilities is without merit. INGAA states that this position would be in keeping with Congress' intent in enacting the short supply exemption as an incentive to encourage expansion or maintenance of the supply. The Commission has determined, in Order No. 440 and in this order, that there is a current excess supply of gas and a sufficient supply of gas for the future domestic needs of the economy. Therefore, the argument on this point is denied for all of the reasons set forth above.

D. Accounting Treatment Equalizing Option 1 and Option 2

Petitioners state that the Commission acted in an arbitrary and unreasonable manner in Order No. 440 when it decided not to allow pipelines to seek the equivalent of Option 2 treatment. The Commission had held in Order No. 440 that in the interest of administrative efficiency, it would not modify its accounting regulations to equalize the benefits received under Option 1 and Option 2. The Commission's decision was based on the conclusion that the pipelines knew the short supply determination could be revoked while their election of Option 1 could not be. In addition, INGAA states that this conclusion is erroneous because the language of the Code does not expressly grant the Commission authority to revoke the short supply determination, and so the pipelines were unaware of that possibility. This latter argument has already been considered and rejected in this order.

INGAA also repeats the contention made in its comments to the NOPR that a refusal to equalize the benefits received by companies under Option 1 and Option 2 would have the effect of penalizing pipelines who elected Option 1a. The Commission fails to see the merits of this argument. As we stated in Order No. 440, the companies who chose Option 1a treatment retained the benefits of investment tax credits under that option for several years, while Option 2 companies did not. Equalizing benefts under Options 1 and 2 upon the revocation of the short supply determination would not recognize the advantage that Option 1a companies had previously over the companies that elected Option 2.

INGAA contends that as an alternative, the pipelines who elected Option 1a should be able to develop ratemaking methods equivalent to Option 2 on a case-by-case basis. The Commission decided against this in Order No. 440 on the basis that use of the established Option 1 methodology served the interests of administrative efficiency. Petitioners have not raised any new arguments that would lead us to change the Commission's previous conclusion.

E. Prospective Application of the Rule

Petitioners request that the Commission clarify the prospective applications of the rule so that it would not apply to facilities certificated prior to the effective date of the rule, January 1, 1986. If facilities are constructed pursuant to a blanket certificate, INGAA suggests the rule would not apply to projects where construction began prior to January 1, 1986. Petitioners' request for clarification is denied. In Order No. 440 the Commission decided against retroactive application of the rule because the pipelines relied upon ratemaking treatment effective before January 1, 1986, to make investments and calculate their rates. It is the policy of this Commission as stated in Order No. 440 to have the pipelines share the benefits of the investment tax credits with the ratepayers as soon as possible, but not to penalize the companies who generated investment tax credits in a prior designated shortage period.

Investment tax credits are generally considered earned at the time the property is constructed. [21] The pipelines can flow through the credits to the shareholders during a period of short supply determination as construction progresses. Petitioners' suggestion would mean that the short supply status would be applied to projects certificated before January 1, 1986, but constructed and completed after that date. This would result in companies earning and retaining the benefits of investment tax credits even after the Commission has determined that there is a sufficient supply of natural gas. Therefore, the application of the rule must coincide with the revocation of the short supply determination.

The prospective application of the rule as of January 1, 1986, will apply to any investment tax credits generated after the revocation of the short supply determination.

For the reasons discussed above, the requests for rehearing of Order No. 440 are denied.

F. Northwest Alaskan Pipeline Company

Northwest Alaskan argues that the Commission erred by revoking the short supply determination in Order No. 440.[22] Further, Northwest Alaskan asserts that the Commission erred by not exempting Northwest Alaskan from the impact of Order No. 440, once the short supply determination was revoked. In this regard, Northwest Alaskan contends that the change in rate treatment of investment tax credits mandated by Order No. 440 will undermine assumptions upon which ANGTS was founded and could have an impact on prospects for successful private financing of the project. If the Commission does not exempt Northwest Alaskan from Order No. 440, Northwest Alaskan seeks clarification that the current rate and accounting treatment for income taxes related to the ANGTS will remain unchanged after the effective date of Order No. 440.

Northwest Alaskan's arguments regarding the adequacy of gas supply are essentially similar to those made by other commenters in this case which have been fully addressed in Order No. 440 and in this order. However, with regard to Northwest Alaskan's request for an exemption or clarification, the Commission believes that clarification is necessary.

[21] I.R.C. Section 46(d).

[22] Although Northwest Alaskan was not listed as a commenter in the appendix to Order No. 440, this was an administrative oversight. The Commission, however, did consider its comments regarding the adequacy of gas supply which were similar to those of other commenters considered and addressed in Order No. 440.

Northwest Alaskan argues that Order No. 440 will change its current rate and accounting methods for investment tax credits which will adversely affect the financing of ANGTS and contravene prior Commission and court orders regarding that rate and accounting treatment. In particular, Northwest Alaskan cites *Northern Border Pipeline Company,*[23] which approved Northwest Alaskan's current rate and accounting treatment, Order No. 380–A,[24] which concerned the treatment of pipeline minimum bills and *Wisconsin Gas Co. v. FERC,*[25] which affirmed Order No. 380–A. Order No. 380–A, as affirmed by *Wisconsin Gas,* stated that any action which could adversely affect the financing of ANGTS would constitute a breach of the assurances regarding the project made by the President and the United States Congress to the Canadian government. Northwest Alaskan asserts that Order No. 440 overturns its current accounting and rate method approved in *Northern Border* contrary to the assurances given to the ANGTS project as noted in Order No. 380–A and *Wisconsin Gas.* Northwest Alaskan therefore requests an exemption from Order No. 440, or clarification that its approved rate and accounting treatment will be preserved.

In response to Northwest Alaskan's assertions, the Commission clarifies that nothing in Order No. 440 changes the treatment of investment tax credits as approved in *Northern Border.* Thus, nothing in Order No. 440 changes the assurances provided in Order No. 380–A and *Wisconsin Gas* regarding the financing of ANGTS.

By the Commission. Acting Chairman Sousa dissented.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–22916 Filed 10–8–86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86–19256, published as T.D. 86–161 on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984, relating to customs brokers. Corrections were made to T.D. 86–161 on September 5, 1986, in 51 FR 31760 and on September 10, 1986, in 51 FR 32208. It has come to our attention that another correction is necessary. On page 30342 of T.D. 86–161, § 111.23(e)(2)(v), Customs Regulations, provides that a written request for authorization to maintain financial records on a centralized systems basis shall include an agreement that all financial records pertaining to customs transactions will be made available to Customs for complete inspection in accordance with §§ 111.25 and 162.1(d), Customs Regulations (19 CFR 111.25, 162.1(d)) after reasonable notice in writing has been provided. One of the purposes of amending the brokers' regulations was to ensure uniformity with the record-keeping provisions of § 162.1(d). Section 162.1(d)(2), Customs Regulations (§ 162.1(d)(2)), provides that reasonable notice for examination of records may be provided either orally or in writing. To allow for the same treatment for brokers as is given to other segments of the importing community, # 111.23(e)(2)(v) should also have stated that reasonable notice for examination of records may be provided either orally or in writing.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch (202–566–5765).

Correction to the Regulations

In FR Doc 86–19256 beginning on page 30336 in the issue of Tuesday, August 26, 1986, make the following correction.

§ 111.23 [Corrected]

On page 30342, second column, in § 111.23(e)(2)(v), sixth line, the words "orally or" should be inserted between the words "notice" and "in".

Dated: October 2, 1986.

Elizabeth B. Anderson,
Commissioner of Customs (Acting).

[FR Doc. 86–22909 Filed 10–8–86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion of Underpayments From Resources

Correction

In FR Doc. 86–21978 beginning on page 34462 in the issue of Monday, September 29, 1986, make the following corrections:

1. On page 34462, in the **SUPPLEMENTARY INFORMATION,** third column, fourth complete paragraph, twelfth line, the first word should read "only";

2. On page 34463, first column, last paragraph, third and fourth lines, "under payments" should read "underpayments"; and

3. On page 34463, third column, fourth paragraph, tenth line, "is" should read "in".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate With Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. that provides for use of a medicated liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound. The medicated liquid feed supplement is used in making Type C medicated feeds for use in heifers being fed in confinement for slaughter, for increased rate of weight gain, improved feed efficiency, and suppression of estrus.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1788.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 125–476 to provide for a medicated liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound in combination with 25 to 600 milligrams monensin per pound. The

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[23] 23 FERC ¶ 61,213 (1983).

[24] FERC Stat. & Reg., Reg. Preambles ¶ 30,584 at 31,062.

[25] 770 F.2d 1144 (D.C. Cir. 1985).

liquid feed supplement is to be mixed into Type C medicated feeds to provide a rate of 0.25 to 0.4 milligram melengestrol acetate and 50 to 360 milligrams monensin per head per day for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers fed in confinement for slaughter. The supplemental NADA is approved and the regulations are amended to reflect the approval. The regulations are also amended by correcting an error and by making editorial revisions consistent with a final rule titled "New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications" that was published in the **Federal Register** on March 3, 1986 (51 FR 7382).

This supplement provides for mixing melengestrol acetate and monensin in a liquid supplement. Approval of this supplement did not require generation of new safety or effectiveness data because the agency has previously approved adding liquid melengesterol acetate to monensin medicated feed, and mixing melengestrol acetate and monensin Type A medicated articles in feed. Therefore, a freedom of information summary is not required for this action.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.342 is amended by revising paragraph (c)(2)(ii), to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(c) * * *

(2) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by (*a*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to Type C medicated feeds containing monensin at 5 to 30 grams per ton, (*b*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to Type C medicated feeds, (*c*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (c)(2)(ii) (*a*) and (*b*) of this section to Type C medicated feeds, or (*d*) using a liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound (50 to 1,200 grams per ton) to make Type C medicated feeds. Type C medicated feeds in paragraph (c)(2)(ii) (*a*) and (*b*) of this section may be manufactured from monensin liquid feed supplements in accordance with paragraph (f)(3)(i)(*b*) of § 558.355. Withdraw melengestrol acetate 48 hours prior to slaughter.

3. Section 558.355 is amended by revising paragraph (f)(3)(iv)(*b*), to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(iv) * * *

(*b*) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by: (*1*) Adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to Type C medicated feeds containing monensin at 5 to 30 grams per ton, (*2*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to Type C medicated feeds, (*3*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (f)(3)(iv)(*b*) (*1*) and (*2*) of this section to Type C medicated feeds, or (*4*) using a liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound (50 to 1,200 grams per ton) to make Type C medicated feeds. Type C medicated feeds in paragraph (f)(3)(iv)(*b*) (*1*) and (*2*) of this section may be manufactured from monensin liquid feed supplements in accordance with paragraph (f)(3)(i)(*b*) of this section. Withdraw melengestrol acetate 48 hours prior to slaughter.

* * * * *

Dated: October 2, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–22864 Filed 10–8–86; 8:45am]

BILLING CODE 4100-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-86-1631; FR-2284]

State and Local Fair Housing Laws; Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final notice.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognizing State and local fair housing laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19). This notice: A. Announces the Department's decision to recognize three additional jurisdictions in accordance with § 115.6(c); and B. Announces the entry into an agreement for interim referrals with five jurisdictions in accordance with § 115.11.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas J. Jankowski, Director, Office of Fair Housing Enforcement and Section 3 Compliance, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–5673. (This is not a toll-fee number.)

SUPPLEMENTARY INFORMATION: A. On August 2, 1985 (50 FR 31394), January 7, 1986 (51 FR 595), and July 9, 1986 (51 FR 24852), the Department published notices seeking public comment on the laws for Boston, Massachusetts; for Arlington County, Virginia; and for the State of Oklahoma, respectively. The notices invited comments on the Department's determination that the fair housing law of each jurisdiction "on its face" provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (the Act). Comment was also invited on the present and past

performance of the agencies administering the law. No public comments were received with respect to the State of Oklahoma or Arlington County, Virginia.

With respect to Boston, only the Massachusetts Commission Against Discrimination (MCAD) submitted comments. MCAD supported Boston's request for substantial equivalency recognition, but raised the potential problem of overlapping jurisdiction involving MCAD and the Boston Fair Housing Commission. The comment concluded:

MCAD strongly believes that the most effective mechanism for addressing these issues and problems is the execution of a tripartite Memorandum of Agreement involving HUD, MCAD and the BFHC. Until now, the execution of such an MOA was not possible because the BFHC had not been recognized as a substantially equivalent agency. With substantial equivalency recognition for the BFHC, the three agencies will have the capacity to create a comprehensive, formalized working relationship by means of an MOA. MCAD believes that the execution of a tripartite MOA would be significantly more effective than the execution of separate MOA's between HUD and each of the deferral agencies. A tripartite MOA will enable MCAD and the BFHC to work out dual-filing and other case processing arrangements with each other as well as with HUD. Furthermore, the existence of a single MOA will eliminate the potential for conflict and confusion resulting from the existence of two separate agreements.

HUD regulations (24 CFR 115.6(c)) require that the Department enter into a written agreement with Boston before substantial equivalency recognition can be granted. That has been accomplished. The three agencies may now work toward a tripartite agreement of the kind that MCAD has suggested.

This publication gives notice of the recognition of the State of Oklahoma; Boston, Massachusetts; and Arlington County, Virginia, in accordance with §115.6(c).

B. The Assistant Secretary has determined, after application of the criteria set forth in §115.3, that the fair housing laws for Danville, Illinois; Marion, Indiana; Boston, Massachusetts; St. Joseph, Missouri; and Rockland County, New York, on their face, provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Federal Fair Housing Act. However, the statutes in these jurisdictions (including Boston, at the time the determination was made) have not been in effect for a sufficient time to permit the enforcement agencies to demonstrate that they meet the performance standards described in §115.4.

This publication gives notice of HUD's entry into an agreement for interim referrals with Danville, Illinois; Marion, Indiana; Boston, Massachusetts; St. Joseph, Missouri; and Rockland County, New York, in accordance with § 115.11. The provisions of § 115.11 require that the agreements for interim referral with the State of Oklahoma and Boston, Massachusetts be terminated on the publication of recognition in accordance with § 115.6(c), as provided in paragraph A, above. (Announcement of the agreement for interim referrals with the State of Oklahoma was made on April 4, 1986 (51 FR 11577).)

Dated: October 3, 1986.

William E. Wynn,

Acting General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 86-22897 Filed 10-8-86; 8:45 am]

BILLING CODE 4210-28-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Implementing the Equal Access to Justice Act

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: On 15 May 1986, the National Labor Relations Board published revisions to its rules and regulations that were required by amendments to the Equal Access to Justice Act. These further revisions to the Board's rules and regulations state the new effective date of the Equal Access to Justice Act to cases before the Board and clarify one provision of the rules.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), and in accordance with the requirements of section 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)), the National Labor Relations Board is revising its rules implementing the Equal Access to Justice Act governing the award of fees and other expenses to eligible parties who prevail in litigation before the Agency. In 1985, the Equal Access to Justice Act was amended with the changes in the Act made applicable to any case commenced after 1 October 1984. On 15 May 1986, the Board published in the **Federal Register** (51 FR 17732) revisions to its rules and regulations that were required by the amendments to the Equal Access to Justice Act and, in one instance, to conform language in the Board's rules to the statutory language.

As stated in the notice of proposed rulemaking (51 FR 30884), in issuing the 15 May 1986 revisions, the Board omitted changing the paragraph of its rules that sets forth the effective date of the Equal Access to Justice Act and retained the 30 September 1984 expiration date of the statute as originally enacted. In addition, one paragraph of the rules, which provides for the content of the application for an award, contains a less precise definition of the employee information required than is necessary to avoid any confusion with other provisions of the rules.

Following the publication of the Board's proposed revisions to its rules, no comments were submitted to the Board. In promulgating these rules, the Board has given due consideration to the model rules of the Administrative Conference of the United States (50 FR 46250) where appropriate.

Section 102.143(a) presently provides that the Board's rules implementing the Equal Access to Justice Act apply to cases pending before the Board between 1 October 1981 and 30 September 1984, the former expiration date of the Equal Access to Justice Act. The provision is revised to have the Board's rules applicable to all cases pending before the Board after 1 October 1984.

Section 102.147(a) presently states the requirements for the application for an award under the Equal Access to Justice Act. In setting forth the employee information that is required, paragraph (a) does not specify that the employee information is that of the applicant and its affiliates. Therefore, in order to conform this paragraph to § 102.143(g), which sets forth the eligibility of an applicant, § 102.147(a) is revised to include the specification that the employee information from the applicant's affiliates, as well as the applicant, must be included in the application.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—[AMENDED]

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.143 is amended by revising paragraph (a) to read as follows:

§ 102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.

(a) The term "adversary adjudication," as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint and backpay proceedings under §§ 102.52 to 102.59 of these rules pending before the Board on notice of hearing at any time after October 1, 1984.

* * * * *

3. Section 102.147 is amended by revising paragraph (a) to read as follows:

§ 102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in that proceeding that the applicant alleges were not substantially justified. Unless the applicant is an individual, the application shall also state the number, category, and work location of employees of the applicant and its affiliates and describe briefly the type and purpose of its organization or business.

* * * * *

Dated: Washington, DC October 3, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-22874 Filed 10-8-86; 8:45 a.m.]

BILLING CODE 7545-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-04]

Drawbridge Operation Regulations; Milhomme Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the St. Martin Parish Policy Jury, the Coast Guard is changing the regulation governing the operation of the pontoon bridge over Milhomme Bayou, mile 12.0, at Stephensville, St. Martin Parish, Louisiana, to require that at least two hours advance notice be given for an opening during the hours from 10 p.m. to 6 a.m. and that the draw continue to open on signal from 6 a.m. to 10 p.m. Presently, the draw is required to open on signal at all times.

This change is being made because of infrequent requests to open the draw during the prescribed advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge between 10 p.m. and 6 a.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (505) 589-2965.

SUPPLEMENTARY INFORMATION: On 4 August 1986, the Coast Guard published a proposed rule (51 FR 27877) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 August 1986. In each notice interested persons were given until 18 September 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

One letter was received in response to the notice, offering no objections to the proposal.

Economic Assessment and Certification

This regulation is considered to be non-major under executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is the continuing decrease in navigation, with few vessels now passing this bridge during the advance notice period of 10 p.m. to 6 a.m. The few vessels involved can reasonably give advance notice by placing a collect call to the Stephensville Bridge between 6 a.m. and 10 p.m., telephone (504) 385-0350, or to the St. Martin Parish Sheriff's office at St. Martinville, Louisiana, between 10 p.m. and 6 a.m., telephone (318) 394-3071. From afloat, this contact may be made by radiotelephone through a public coast station. The mariners requiring the bridge openings are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the advance notice period will involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.481 [Redesignated as § 117.482]

2. Section 117.481 (Nezpique Bayou) is redesignated as § 117.482 and a new § 117.481 is added to read as follows:

§ 117.481 Milhomme Bayou.

The draw of the St. Martin Parish bridge, mile 12.0 (Landside Route) at Stephensville, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. During the advance notice period, the draw shall open on less than two hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: September 25, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86-22908 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 430 and 433

45 CFR Part 201

[BPO-041-F]

Medicaid Program; Adjustment of Federal Share for Uncashed or Cancelled (Voided) Checks

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations require that a State agency refund to the Federal Government the Federal share of Medicaid checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance. In addition, we are requiring that the Federal share of cancelled (voided) Medicaid checks be refunded quarterly since there has been no expenditure by the State.

These regulations implement, in part, a 1981 General Accounting Office recommendation that procedures be established for States to credit the Federal Government for the Federal portion of uncashed Medicaid checks issued by the State or its fiscal agent.

EFFECTIVE DATE: These regulations are effective November 10, 1986.

FOR FURTHER INFORMATION CONTACT: David D. McNally, 301-597-1398.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1985, we published in the Federal Register, at 50 FR 23147, a Notice of Proposed Rulemaking (NPRM) to solicit comments on proposed changes to the regulations requiring that a State agency refund to the Federal government the Federal share of Medicaid checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance, and the Federal share of any interest earned on those funds. The proposed regulations also required that a State agency refund the Federal share of cancelled (voided) checks, plus the Federal share of any interest earned on those funds.

These revisions were proposed as a result of a 1981 General Accounting Office (GAO) study and recommendations included in a report entitled, *Improving Medicaid Cash Management Will Reduce Federal Interest Costs*, HRD-81-94. The study found that, in some cases, States held Federal Medicaid funds for unnecessarily long periods, enabling States to earn interest on funds that the Federal government had borrowed. In this report, GAO recommended that the Medicaid program establish uniform requirements for States to credit the Federal government for its portion of uncashed Medicaid checks.

On September 17, 1985, the Social Security Administration (SSA) published a final regulation (50 FR 37659) to incorporate revisions SSA proposed on February 22, 1983 (48 FR 7479). In order to not further amend SSA's regulations at 45 CFR 201.67 solely to add Medicaid provisions, and to keep our regulations on State fiscal administration in one location, we are placing our final rule at 42 CFR 433.40. We are making only necessary editorial changes and those resulting from comments, discussed below.

II. Response to Public Comments

In response to our request for public comments on the May 31, 1985 publication, we received nine letters from State agencies and one letter from an individual.

1. *Comment:* Three States opposed the requirement in the proposed regulations that States must refund the Federal share of any interest earned on uncashed or cancelled (voided) checks. The commenters believe that this requirement is contrary to the provisions and intent of section 203 of the Intergovernmental Cooperation Act (ICA), Pub. L. 90-577, which permits States to retain any interest earned on Federal funds pending disbursement for program purposes. A fourth State suggested that we use a specific, uniform method for computing interest.

Response: We agree with the commenters that section 203 of the ICA permits States to retain interest earned on Federal funds pending disbursement for program purposes. However, for Medicaid program purposes, a disbursement occurs when a State agency *issues* a check and Federal funds are claimed with respect to it. States now accrue interest on that amount until the check is cashed or voided. Therefore, once a check is issued by a State and Federal funds are claimed, we consider the funds to have been disbursed, and the Federal share of any interest earned during that period to be refundable to the Federal government in accordance with the regulations at 45 CFR 74.47(a).

Nevertheless, we are not requiring in the final rule that States return the Federal share of any interest earned on uncashed or cancelled (voided) checks because we have decided that this is an issue that is more appropriately addressed in the context of government-wide reform. The joint State-Federal Task Force on Cash Management, under the direction of the U.S. Treasury, is examining a variety of cash management policies that would govern all exchanges of funds between Federal and State governments, including a variety of requirements concerning interest payments on cash transfers. It would be inconsistent with the goals of the Task Force to implement these specific Medicaid requirements at this time.

2. *Comment:* One State recommended that uncashed checks be subject to the State's abandoned property statute because it would be easier to implement and administer than the method proposed in the regulations. Under their current claims processing system, the State is unable to link a payment check to the specific services furnished by a provider or the specific claim documentation. This makes it difficult to return the Federal share of an uncashed check or to issue replacement checks. Also, under the State's current claiming procedures, issuing replacement checks has no effect on the State's claim of Federal financial participation (FFP). Treating uncashed checks as abandoned property would: (1) Preclude the State from exchanging an uncashed check for a new check after expiration of the time period in the abandoned property statute, and (2) make the process of returning the Federal share easier to administer. Once the State reacquires a legal interest in the check under the abandoned property statute, the Federal funds can be returned outside the State's claims processing system.

Response: Although the system offered by the State would be easier for it to implement, it cannot be accommodated because it will allow the State to hold Federal Medicaid funds for unnecessarily long periods of time. As we stated in the preamble to the proposed rule, the purpose of our changes was to correct situations where States held Federal Medicaid funds for unnecessarily long periods of time, allowing States to earn interest on funds the Federal Government had borrowed. To improve our cash management practices, and to implement GAO recommendations, we proposed to

establish uniform requirements for States to credit the Federal Government for our share of uncashed Medicaid checks.

3. *Comment:* One commenter was concerned that if a replacement check is issued 2 years after the original check was issued that HCFA will deny FFP on the grounds that the claim was not timely filed.

Response: The 2-year time limitation will not apply to the claim for FFP in a replacement check. The claim for FFP in a replacement check will be treated as an adjustment to the costs for the quarter in which the expenditure was originally claimed. The claim will be paid if otherwise allowable under the Act and the regulations.

4. *Comment:* Several States indicated that implementing the regulations as proposed would require them to adopt procedures that are contrary to their State laws. One State commented that refunding the Federal share of warrants without cancelling them would be a violation of the State's law against issuing warrants with insufficient funds. In order to comply with both this regulation and State law, the State would have to incur the additional administrative expense of cancelling all outstanding warrants. Four States opposed the regulation because it would require them to change their existing procedures for returning the Federal share of uncashed checks and warrants. Those procedures are dictated by State laws which allow uncashed checks and warrants to remain valid (i.e., outstanding) for longer periods of time than permitted under these regulations. One State recommended that we modify the regulation to allow uncashed checks to remain valid for 2 years rather than 6 months before requiring that the State return the Federal share. The commenter suggested that 2 years is a more reasonable time period, and would reduce States' administrative expenses.

Response: As we stated in the preamble to the proposed rule, States are not required to cancel checks and warrants under these regulations. Therefore, they may remain outstanding for as long as State laws permit.

We believe that 180 days is a reasonable period for a provider to cash a check and is based on accepted banking practice. We are not requiring that States cancel or void checks that are not cashed 180 days after the date of issuance.

The purpose of this regulation is merely to ensure that Federal funds are not held for unnecessarily long periods in the event that a provider does not promptly cash a Medicaid check or warrant. Federal funds left outstanding for prolonged periods of time, as noted by GAO in their 1981 report, cost the Federal Government the interest it pays on borrowed funds.

5. *Comment:* One commenter reported that the State-Federal Task Force on Cash Management, chaired by the U.S. Department of Treasury, is studying equitable intergovernmental cash management issues. The commenter suggested that we not publish a final regulation until recommendations are made by this task force.

Response: The State-Federal Task Force on Cash Management studied alternative methods of advancing funds to States from their letters of credit. With the exception of the interest assessment issue, discussed in the response to comment 1, we see no conflict between these regulations and the work of the task force.

6. *Comment:* Eight States opposed the regulation as too costly and administratively burdensome for them to implement. Some expressed the opinion that the benefits derived from the regulation would be minimal considering the time, effort and expense of implementation.

Response: As discussed in the response to an earlier comment, we have removed from the final regulation the requirement that States return the Federal share of any interest earned on uncashed or cancelled (voided) checks. We believe that this will simplify implementation of these procedures by the States since they will not be required to calculate and track interest on individual checks.

7. *Comment:* One State argued that these regulations are unnecessary because there already are ample Federal regulations that promote efficient cash management.

Response: We do not agree. We proposed our regulations because there are no other regulations on which we can rely to enforce compliance with this aspect of cash management.

8. *Comment:* One individual suggested that the funds from uncashed or cancelled Medicaid checks that are returned to HCFA by the State under these regulations be used to establish a dental program for adults. Additional funding for the dental program, it was suggested, could come from the portion of the Federal Insurance Contributions Act (FICA) tax deducted from the salaries of Federal employees.

Response: There is no special separate Federal account into which funds from uncashed or cancelled State Medicaid checks could be deposited for the purpose suggested. The amount of an uncashed or cancelled check will be entered as a decreasing adjustment on a State's Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form HCFA-64). The adjustment is applied against the State's Medicaid program expenditures claimed for reimbursement and, in effect, reduces the amount of Federal funds available to the State. Use of Federal Medicaid funds to establish a dental program is not authorized under Title XIX of the Social Security Act. Medicaid program funds may only be used to assist States in paying for administrative expenses and covered medical services furnished to eligible Medicaid recipients. Similarly, the FICA tax funds deducted from the salaries of Federal employees are credited to the Hospital Insurance Trust Fund and, by law, may only be used to finance administrative expenses and health insurance benefits under the Medicare program to eligible beneficiaries.

III. Revisions to the Regulations

After we published our proposed rule on May 31, 1985 (50 FR 23147), 45 CFR Part 201 was revised on September 17, 1985 (50 FR 37659) to incorporate changes proposed by SSA on February 22, 1983 (48 FR 7479). Medicaid regulations applying to uncashed or cancelled (voided) checks differ slightly from the regulations for other grant programs specified in 45 CFR 201.67. In order to not further amend SSA's regulations at 45 CFR 201.67 solely to add Medicaid provisions, and to keep our regulations on State fiscal administration in one location, we are placing our final rule at 42 CFR 433.40.

We are adopting as final the proposed rule published on May 31, 1985 with these modifications:

1. We are placing the content of proposed 45 CFR 201.67 in a new section, 42 CFR 433.40, and revising the title to read Treatment of uncashed or cancelled (voided) Medicaid checks.

2. In proposed 45 CFR 201.67(b), now 42 CFR 433.40(b), we removed the portions of the definitions of "cancelled check" and "uncashed check" that apply only to grant programs administered by SSA.

3. In proposed 45 CFR 201.67(c)(1) and (2), revised as 42 CFR 433.40(c)(1) and (2), we are not instituting the proposed requirement that a State must refund the Federal share of any interest earned on checks that remain uncashed 180 days after issuance by the State.

4. In new section 42 CFR 433.40(c)(2) and (d)(2), we are removing the third sentence in each paragraph, as this is unnecessary.

5. In proposed 45 CFR 201.67(d)(1) and (2), revised as 42 CFR 433.40(d)(1) and

(2), we are not instituting the proposed requirement that a State must refund the Federal share of any interest earned on cancelled (voided) checks.

6. In 45 CFR 201.5(a)(3), we are adding an additional reference to a new section 42 CFR 433.40.

IV. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires that, for any major rule, a regulatory impact analysis be performed and made available to the public. A "major rule" is defined as a regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets. We have determined that this final rule is not a "major rule" under Executive Order 12291; therefore, a regulatory impact analysis is not required.

These regulations require a State agency to refund to the Federal Government the Federal share of checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance. In addition, they require that the Federal share of cancelled (voided) Medicaid checks be refunded quarterly since there has been no State expenditure. This regulation allows us to recoup the Federal share of uncashed and cancelled (voided) checks in a timely manner.

Actual recoupments will depend on the volume of uncashed or cancelled (voided) checks in the States reviewed and the accounting practices used by these States to report those expenditures. A preliminary analysis of the Regional Office financial management reviews conducted in fiscal years 1984 and 1985 identified several States in which savings would result from recovery of the Federal portion of the uncashed or cancelled (voided) checks. This regulation will, by establishing clear policy, enable us to issue a disallowance, if necessary, to recover any funds due the Federal Government. Previously, a lack of regulations has prevented us from taking a disallowance and recovering the Federal share of uncashed checks.

We anticipate some savings from not borrowing and paying interest on funds to cover the Federal share of checks that remain uncashed. Some State Medicaid checks issued to providers often remain uncashed for prolonged periods of time, in some cases as long as 7 years. This rule will set an outside limit on the length of time we will permit the Federal share of uncashed or cancelled (voided) checks to remain outstanding. Exact interest savings would be a function of the amount of identified recoupments and the current interest rate on borrowed funds.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States to be small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction," which means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." No States meet this definition.

Therefore, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required.

V. Paperwork Reduction Act

Sections 45 CFR 201.5, 42 CFR 433.40(c)(2) and 433.40(d)(2) of this final rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when OMB approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HCFA.

States currently comply with this information collection by reporting the required data on the Quarterly Statement of Expenditures, form HCFA-64. This form is approved under OMB number 0938-0067.

List of Subjects

42 CFR Part 430

Grant programs—health, Medicaid.

45 CFR Part 201

Aid to families with dependent children, Grant programs—social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands, Medicaid.

TITLE 42—PUBLIC HEALTH

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. 42 CFR Chapter IV is amended as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority citation for Part 430 continues to read as follows:

Authority: Sec. 1102, Social Security Act; 42 U.S.C. 1302.

2. Section 430.0(b)(3) is revised to read as follows:

Subpart A—Introduction; Definitions

§ 430.0 Introduction to Subchapter C.

* * * * *

(b) Federal Regulations. * * *

(3) Regulations in 45 CFR Parts 201, 204, 205, and 213 also apply to the Medicaid program, to the extent specified.

PART 433—STATE FISCAL ADMINISTRATION

Subpart B—General Administrative Requirements

3. The authority citation for 42 CFR Part 433 Subpart B is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1903(a)(1), 1903(d)(2), 1903(d)(3), 1903(o), 1903(p), 1912 and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396b(a)(1), 1396b(d)(2), 1396b(d)(3), 1396b(o), 1396b(p), 1396k and 1396p), unless otherwise noted.

4. The table of contents for Part 433 is amended by adding the heading for new § 433.40 under Subpart B, to read as follows:

Subpart B—General Administrative Requirements

Sec.

* * * * *

433.40 Treatment of uncashed or cancelled (voided) Medicaid checks.

5. A new § 433.40 is added to read:

§ 433.40 Treatment of uncashed or cancelled (voided) Medicaid checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the

Federal portion of uncashed or cancelled (voided) checks under title XIX.

(b) *Definitions.* As used in this section—"Cancelled (voided) check" means a Medicaid check issued by a State or fiscal agent which prior to its being cashed is cancelled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

"Check" means a check or warrant that a State or local agency uses to make a payment.

"Fiscal agent" means an entity that processes or pays vendor claims for the Medicaid State agency.

"Uncashed check" means a Medicaid check issued by a State or fiscal agent which has not been cashed by the payee.

"Warrant" means an order by which the State agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks.*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; i.e., the date of the check, it will no longer be regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued pursuant to the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for cancelled (voided) checks.*—(1) *General provision.* If the State has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State must refund all FFP that it received for cancelled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

TITLE 45—PUBLIC WELFARE

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH AND HUMAN SERVICES

B. Title 45, Part 201 of the Code of Federal Regulations is amended as set forth below:

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

1. The Authority citation for 45 CFR Part 201 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

2. Section 201.5(a)(3) is revised to include a reference in the last sentence to 42 CFR 433.40 as follows:

§ 201.5 Grants.

* * * * *

(a) Form and manner of submittal.

* * * * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed or cancelled (voided) checks as described in § 201.67 of this part, and 42 CFR 433.40 for Medicaid purposes, or which have been revealed in the course of an audit

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: February 4, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: June 11, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-22906 Filed 10-8-86; 8:45 am]

BILLING CODE 4120-01-M

Proposed Rules

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-41-AD]

Airworthiness Directives; de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, which would require initial and repetitive inspections of both wing support strut assemblies, P/N C6W1005-7 and C6W1005-8, for corrosion and, if necessary, replacement before further flight. The proposed AD is prompted by a report of a DHC-6 airplane that had both wing struts affected by corrosion in the beam flanges. Severely corroded wing struts could fail in flight, resulting in wing collapse. The inspections required by the proposed AD will detect any corrosion before it can lead to failure of the wing struts.

DATES: Comments must be received on or before December 15, 1986.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/474, Revision A, dated March 28, 1986, applicable to this AD may be obtained from The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada Limited, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-41-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-41-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

de Havilland Aircraft Company of Canada received a report that one Canadian DHC-6 airplane had corrosion in both wing support strut beam flanges enclosed by the strut skins. As a result, de Havilland has issued Service Bulletin (S/B) No. 6/474, "Wings—Wing Struts Special Inspection for Internal Beam Corrosion", dated June 14, 1985, and Revision A, dated March 28, 1986. This service bulletin recommends initial and repetitive inspections of the wing struts for corrosion, both internally and externally. An area of particular concern where corrosion could develop is 20 inches from either end of the strut. Any corrosion in this area, or moderate or severe corrosion anywhere on the wing support strut, necessitates replacement of the struts before further flight.

Transport Canada, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified S/B No. 6/474 and the actions recommended therein by the manufacturer as mandatory by issuing AD CF-85-14, effective November 25, 1985, to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B No. 6/474 and the mandatory classification of this service bulletin by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 6/474 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require initial and repetitive inspections for corrosion of the internal and external areas of the wing struts and, if necessary, replacement before further flight.

The FAA has determined there are approximately 194 de Havilland DHC-6 series airplanes in the United States registry affected by the proposed AD. The cost of removing, inspecting, and reinstalling the struts on these airplanes in accordance with the proposed AD is estimated to be $640 per airplane. The total cost for each inspection of the fleet is estimated to be $124,160 to the private sector.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a

significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulation evaluation has been prepared for this section and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, after the effective date of this AD, unless already accomplished.

To prevent failure of the wing support struts due to corrosion, accomplish the following:

(a) Visually inspect each wing support strut for corrosion in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 6/474, dated June 14, 1985, Revision A, dated March 28, 1986, as follows:

(1) For aircraft that have accumulated 5,000 or more hours time-in-service (TIS) or are four and one half or more years old on the effective date of this AD, accomplish the inspection within the next 1,000 hours TIS or six months, whichever occurs first, after the effective date of this AD.

(2) For aircraft that have accumulated less than 5,000 hours TIS and are less than four and one half years old on the effective date of this AD, accomplish the inspection before the accumulation of 6,000 hours TIS or five years, whichever occurs first.

(3) For all airplanes, reinspect at intervals not to exceed 6,000 hours TIS or five years, whichever occurs first, following the previous inspection accomplished in accordance with this AD.

(b) If the inspections specified in paragraph (a) of this AD show moderate or severe corrosion, or any corrosion within 20 inches from either end of the wing support struts, replace the affected support strut prior to further flight.

(c) If the inspections specified in paragraph (a) of this AD show light corrosion in areas other than 20 inches from either end of the struts, remove the corrosion within 30 days.

Note.—Advisory Circular (AC) 43–4, discusses corrosion evaluation, degree of damage, and rework procedures.

(d) An alternate method of compliance, which provides an equivalent level of safety, may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times in this AD.

All persons affected by this directive may obtain copies of the document referred to herein upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada Limited, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 30, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–22848 Filed 10–8–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–194–AD]

Airworthiness Directives; Fairchild Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Fairchild Model F–27 series airplanes, which requires a daily inspection of the wing-to-fuselage fairing, both left and right, for evidence of cracks or looseness around screws and grommets. This action would provide for a modification, which, if incorporated, would constitute terminating action for the daily inspection requirements. This action would also limit the applicability of the existing AD to those airplanes which have not had the modification incorporated in production.

DATE: Comments must be received no later than December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Dockets No. 86–NM–194–AD, 17900 Pacific HIghway South, C–68966, Seattle, Washington, 98168. The applicable service information may be obtained from Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Donald E. Gonder, Technical and Administrative Support Staff, (ANM–103), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–2128; or Charles Birkenholz, Airframe Branch (ANE–172), FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581 telephone (516) 791–6620.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket

No. 86-NM-194-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Discussion: In 1958, the FAA issued Airworthiness Directive (AD) 58-25-03, applicable to Fairchild Model F-27 series airplanes, which requires a daily inspection of the wing-to-fuselage fairing, both left and right, for evidence of cracks or looseness around screws and grommets. This action was prompted by reports of the inflight loss of the wing-to-fuselage fairing, Part Numbers (P/N) 27-100102-1 and 27-100103-1. The required inspections were intended to continue, pending investigation and development of a permanent solution.

Fairchild subsequently issued Service Bulletin F27-53-9, Revision 1, dated May 13, 1959, which describes modification of the fairings by replacing the existing stiffeners with improved stiffeners, and adding reinforcing strips in the area of the attachment points. The FAA is herein proposing an AD which would provide terminating action for the repetitive inspections required by AD 58-25-03 by incorporation of this modification in accordance with the Fairchild service bulletin.

In addition, the modifications described in the Fairchild service bulletin have been incorporated in the production on certain F-27 airplanes, Manufacturer's Serial Numbers 40, 49, and subsequent. For this reason, the FAA is proposing to limit the applicability of the daily inspections required by the AD to only those airplanes, Manufacturer's Serial Numbers 1 through 39, and 41 through 48, which are equipped with wing-to-fuselage fairings, P/N's 27-100102-1 or -2, and 27-100103-1, -2, -31, or-32.

Since this proposal would only add an optional modification which would constitute terminating actions for the daily inspection requirement of AD 58-25-03, and would reduce the number of airplanes affected by the requirements of the AD, it would impose no additional economic burden on any operator.

For these reasons, the FAA has determined that this document: (1) Involves a proposed reglation which is not major under Executive Order 12291 and (2) is not a significant rule pusruant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few if any of these aircraft are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By supperseding Airworthiness Directive (AD) 58-25-03 with the following new airworthiness directive:

Fairchild Republic Company: Applies to Model F-27 series airplanes, Manufacturer's Serial Numbers 1 through 39, and 41 through 48; equipped with wing-to-fuselage fairing, Part Numbers (P/N) 27-100102-1 or -2, and 27-100103-1, -2, -31, or -32; certificated in any category. Compliance required as indicated, unless previously accomplished.

To precent the inflight loss of the wing-to-fuselage fairning, accomplish the following:

A. Conduct a daily visual inspection of wing-to-fuselage fairing, both right and left, for cracks or looseness around screws and grommets. If cracks or losseness is found, before further flight install washer P/N AN970-3, and use washer head screw P/N AN525-10R9 in place of P/N AN509-10R9. Daily inspections are to continue until the modification of the fairings, described in paragraph B., below, ius accomplished. NOTE: Caution should be used not to overtighten screws, as cracks may develop.

B. Modification of the wing-to-fuselage fairings in accordance with Fairchild Service Bulletin F27-53-9, Revision 1, dated May 13, 1959, or later FAA-approved revisions, constitutes terminating action for the daily inspection requirement of paragraph A., above.

C. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22847 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program amendments to the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments submitted by the State on August 18, 1986, are intended to address program deficiencies the Director required the State to correct as set forth under 30 CFR 906.16(b)-(h).

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and information pertinent to the public hearing.

DATE: Written comments relating to Colorado's proposed modifications of its program not received on or before 4:00 p.m. November 10, 1986, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on November 3, 1986, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

Persons wishing to comment at the public hearing should contact the person

listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business October 29, 1986.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

If a public hearing is held, its location will be at: OSMRE Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, N.W., Albuquerque, New Mexico; Telephone: (505) 766-1406.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Colorado program, the proposed amendments, and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Albuquerque, New Mexico, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**". If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Colorado Program

Information regarding the general background on the Colorado State Program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173-82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15, and 906.16.

III. Discussion of the Proposed Amendments

On August 18, 1986, Colorado submitted to OSMRE pursuant to 30 CFR 732.17 proposed State program amendments for approval.

The amendments were submitted to address program deficiencies which the Director required the State to correct as set forth under 30 CFR 906.16(b)-(h).

These provisions specify the following:

(b) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

(c) By February 5, 1987, Colorado shall submit a revised form of 2 CCR 407-2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

(d) By February 5, 1987, Colorado shall submit revisions to 3 CCR 407-2, 406.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(e) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 406.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be not less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

(f) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 406.1(4)(a)(iii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator must demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

(g) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

(h) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

Colorado submitted proposed charges to the following State regulations to satisfy the above requirements:

2.02.2(2)(g)
2.04.12(1)
2.10.1(1)
4.06.1(2)
4.06.2(2)(a)
4.06.2(4)(a)
4.21.4(1)

In addition, Colorado submitted a memorandum on the Division's interpretation of Rule 4.06.1(2).

OSMRE is seeking comment on the adequacy of the amendments in satisfying the requirements set forth under 906.13(b)-(h), and on whether the amendments are consistent with SMCRA and no less effective than its implementing regulations.

IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need to prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption for sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this is rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-22784 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 85-010]

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

Correction

In FR Doc. 86-21591 beginning on page 34332 in the issue of Friday, September 26, 1986, make the following correction:

§ 151.01-1 [Corrected]

On page 34357, in the third column, § 151.01-1(b), in the first line, "are" should read "are not".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3091-9]

Mining Waste Exclusion; Withdrawal of Proposed Provision

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule; final action.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation under Subtitle C of RCRA (which regulates hazardous waste), pending completion of certain studies by EPA. The Agency interpreted this exclusion to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals." 45 FR 76619, November 19, 1980. On October 2, 1985, EPA proposed to narrow the scope of the exclusion as it applies to processing wastes. 50 FR 40292. EPA also proposed to relist six individual waste streams which would no longer have been deemed to be processing (*i.e.*, excluded) wastes. EPA is withdrawing this proposed rule by today's action. The effect of this action is to retain the existing regulation (40 CFR 261.4(b)(7)) along with the Agency's existing interpretation of its scope.

DATE: This proposed rule is withdrawn effective September 30, 1986.

ADDRESS: The address for the EPA RCRA docket is: United States Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460, (202) 475-9327.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000 or Dan Derkics at (202) 382-2791.

SUPPLEMENTARY INFORMATION:

I. History of Mining Waste Under RCRA

In section 8002(f) of the Resource Conservation and Recovery Act (RCRA), enacted on October 21, 1976, Congress instructed the Administrator to conduct, in consultation with the Secretary of the Interior, "a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources."

On December 18, 1978 (43 FR 58,946), EPA proposed regulations for hazardous waste management under Subtitle C of RCRA. These proposed regulations, among other things, had fewer requirements for a universe of so-called "special wastes" that are generated in large volumes, were thought to pose less of a hazard than other hazardous wastes, and were not thought to be amenable to the control techniques proposed for hazardous waste treatment, storage and disposal facilities. EPA identified waste materials from the "extraction, beneficiation, and processing of ores and minerals," *i.e.*, mining waste, as one such "special waste" under the proposed regulations.

On May 19, 1980, EPA promulgated the final hazardous waste management regulations which applied to, among other things, mining waste. On May 19, 1980 and July 16, 1980, EPA also listed as hazardous eight waste streams from primary metal smelters.

On October 21, 1980, Congress enacted Pub. L. 96-482 which included various amendments to RCRA. Section 8002 was amended to include subsection (p), which required the Administrator to study the adverse effects on human health and the environment, if any, of waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore," and submit a Report to Congress on its findings by October 21, 1983. Section 7 of these amendments (the "Bevill Amendment") amended section 3001 of RCRA to exclude these wastes from regulation under Subtitle C of RCRA pending completion of the

studies called for in sections 8002(f) and (p).

On November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect the mining waste exclusion. The regulatory language incorporating the exclusion is identical to the statutory language (except the phrase "including coal" was added). In the preamble to the amended regulation, however, EPA interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals." 45 FR 76118, 76619. For consistency with this interpretation in the November 19, 1980 amendment, the Agency also amended 40 CFR Part 261 to suspend the listings of the eight waste streams associated with smelting as hazardous wastes. 46 FR 4614, January 16, 1981 and 46 FR 27473, May 20, 1981.

In the November 19, 1980 notice, EPA indicated that it intended to reconsider its interpretation of the exclusion, particularly as it applied to smelting and refining wastes. The notice also indicated that any subsequent action to narrow the scope of the exclusion would be a formal rulemaking.

On September 28, 1984, Concerned Citizens of Adamstown, Carroll Manor Civil Association, and the Environmental Defense Fund sued EPA for failure to complete the mining waste studies and Report to Congress required by RCRA sections 8002 (f) and (p). *Concerned Citizens of Adamstown* v. *EPA*, No. 84-3041, D.C. District Court. EPA explained to the Court that it planned to proposed to "reinterpret" the scope of the mining waste exclusion so it encompassed fewer wastes. Therefore, EPA proposed two schedules to the court: one for completing the section 8002 mining waste studies and submitting the Report to Congress, and one for proposing and taking final action on the reinterpretation. On August 21, 1985, the District Court ordered EPA to meet these two schedules.

In compliance with the court order, on December 31, 1985, EPA completed the section 8002 mining waste studies and submitted its Report to Congress on "Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale." Six months later, as required by RCRA section 3001(b)(3)(C) and by the court order, EPA published its "regulatory determination" regarding the wastes covered by the Report to Congress. In this notice, EPA concluded that regulation of the wastes included in the Report under RCRA Subtitle C is not warranted at this time. 51 FR 24496, July 3, 1986.

In the meantime, EPA proposed to narrow the scope of the mining waste exclusion (and to relist six wastes as hazardous), according to the schedule in the District Court's order. 50 FR 40292, October 2, 1985. In preparing the proposed mining waste reinterpretation, EPA consulted various sources, but was unable to find any standard, accepted definitions, *i.e.*, "plain meanings," for the terms of the mining waste exclusion, particularly "processing." *Id.* at 40293. Therefore, EPA next looked to the legislative history for this provision. Our review of the legislative history indicated that the exclusion was intended to cover the category of wastes designated as "special wastes," including "solid waste from the extraction, beneficiation, and processing of ore minerals," in EPA's 1978 proposed hazardous waste regulations at 43 FR 58946, December 18, 1978. As mentioned earlier, "special wastes" were thought to be generated in large volumes and to pose less of a hazard than other hazardous wastes. EPA adopted this "high volume, low hazard" concept as the basis for the October 2, 1985 proposed mining waste interpretation. *Id.* at 40924. Specifically, EPA proposed to reinterpret the exclusion so that red and brown bauxite refining muds, phosphogypsum, slag from phosphorus reduction, and slag from primary metal melters would be the only processing wastes covered by the mining waste exclusion because EPA believed these were the only processing wastes which met the high volume, low hazard criteria. *Id.* In the proposal, EPA requested that commenters identify any other processing wastes that met the "special waste" criteria and therefore should remain within the mining waste exclusion.

II. Basis for Withdrawal of the Proposed Rule

In response to the proposal, many commenters "nominated" wastes which they believed fit the "special waste," *i.e.*, high volume, low hazard criteria, and therefore should remain excluded from Subtitle C regulation as "processing wastes." Since EPA did not specifically quantify the terms "high volume" or "low hazard" in the proposal, the Agency was unable to determine the status of these additional wastes. As explained in more detail below, EPA tried to infer definitions for these terms from the four wastes listed in the proposal as meeting these two criteria. At that point, it became clear that the selection of a high volume cutoff, and the definition of "low hazard," raised several major issues. In particular, a volume cutoff only makes sense if the wastes are arrayed in defined, consistent groups, and the data for each group comparable, *e.g.*, they are for the same year, they represent the same type of waste (solid or hazardous), they measure the same thing (per facility or per industry). Since the proposed mining waste reinterpretation did not define "high volume" or "low hazard," nor did it discuss any of the issues associated with these definitions, the public could not discern whether a given waste might quality for continued exclusion as a high volume, low hazard waste, much less comment on the validity of those criteria. Therefore, the Agency believes it cannot promulgate a final mining waste reinterpretation based on its October 2, 1985 proposal. These various issues raised by the proposal are discussed in more detail below.

A. Grouping

To determine whether a given waste is a high volume waste, it is essential to have rational "groupings" of waste, either by type of industry (*e.g.*, all copper wastes, all lead wastes), by type of waste (*e.g.* all smelter slags, all emission controls dusts and sludges), or both (*e.g.*, copper slag, emission control dusts and sludges from ferro-chromium production). EPA did not set out any grouping scheme in the proposal. In fact, the wastes EPA believed would remain excluded under the reinterpretation arguably are grouped inconsistently, since phosphorus reduction slag was listed separately, while all the primary metal slags (including copper, lead, and zinc) were lumped together. Obviously the groupings are very significant; once a high volume cutoff is selected, whether a given waste is high volume or not depends on what other wastes, if any, it is grouped with. EPA believes the lack of consistent groupings is the most significant gap in its proposed reinterpretation.

B. Solid Waste v. *Hazardous Waste*

The proposal considered solid waste (which includes hazardous waste) generation data to determine whether it was high volume. However, EPA could have relied on hazardous waste volumes only. This issue was not discussed in the proposal.

C. Data Base

The mining industry has experienced decline in certain sectors over the past few years. To the extent production is down, the Agency assumes that waste generation is decreased as well.

Likewise, as lower grade ores are mined, more waste per unit of product is generated. At the same time, production methods are improving such that waste generation rates have decreased in some processes. Clearly, it is necessary to select a baseline (either a single year, or an average over some period of years to reflect fluctuating production levels in the mining industry) for comparing volumes of waste generated. No such baseline was specified in the proposal.

D. Per-Facility v. Industry-Wide Data

In some operations, a single waste may constitute a very large percentage of the total waste generated at that facility, and in that sense, be "high volume" for a given facility. Likewise, a waste may be generated in relatively low volumes at each facility, but there might be numerous facilities producing that waste, so the industry-wide total would be high. However, in the proposal, EPA did not specify whether it would look at data for individual facilities, or only industry-wide data, to determine whether a waste was high volume.

E. Definition of High Volume

The proposed mining waste reinterpretation did not define "high volume," *i.e.*, no volume cutoff was specified. The proposal did list the volume of each of the four wastes that it believed would remain excluded as follows:

Waste	Volume (million metric tons)
Phosphogypsum	47
Primary metal smelter slags	4
Phosphorus reduction slag	3
Bauxite refining muds (red and brown)	2

From this list, one could infer that the lowest volume, *i.e.* 2 million, was the high volume cutoff. However, EPA has since determined that bauxite refining muds are actually a beneficiation waste, not a processing waste. Therefore, EPA next looked to the two slag wastes for an appropriate cutoff. However, as mentioned above, phosphorus reduction slag was listed separately, while all the primary metal slags (including cooper, lead, and zinc) were lumped together. If EPA had listed the primary metal slags separately, the volume for the smallest, and in turn the implied cutoff, might have been substantially lower.

F. Definition of Low Hazard

In the proposed mining waste reinterpretation, EPA did not actually define "low hazard." It was not clear whether EPA was relying on the four hazardous waste characteristics, which appear in 40 CFR Part 261, Subpart, C, or some other definition. Also, the proposal did not explain whether EPA was looking at the hazard associated with a given waste stream, or the proportion of hazardous waste in a group of wastes generated in the same process.

III. Conclusion

By court order, EPA is obliged to take final action by September 30, 1986. At this time, the comments as well as the Agency's own analyses, have convinced us that the proposed reinterpretation cannot be finalized because it did not set out practically-applicable criteria for distinguishing processing from non-processing wastes. Moreover, we are unsure whether such criteria could be developed, given the complexity of these issues. Therefore, the Agency is withdrawing the proposal. As a consequence, EPA's current interpretation of the mining waste exclusion, as set out in the November 19, 1980 rulemaking notice, remains in place. EPA believes this to be a permissible, though by no means the sole permissible, interpretation of the ambiguous statutory phrase "processing of ores and minerals." A second consequence of this action is that the Agency also is withdrawing the proposed relistings of the six individuals waste streams. These wastes, under the current interpretation, are deemed to be derived from processing of ores and minerals and so are excluded from regulation under Subtitle C until the requisite section 8002 studies are completed.

Although we are withdrawing the proposed regulation at this time, the Agency is continuing to grapple with the problem of formulating "ground rules" which define the wastes that are covered by the mining waste exclusion, which in turn defines the section 8002 study obligation. In the course of completing its obligation under Section 8002, EPA will attempt to further clarify the scope of the mining waste exclusion. EPA may utilize aspects of this proposal in doing so, and certinly is not stating that the high volume, low hazard principle is inherently unsound. In a more quantified from, this principle could become the basis of such ground rules. The Agency is considerign other ground rules as well. In the meantime, the Agency will proceed with additional section 8002 studies addressing processing wastes. The Agency intends to include the six wastes we proposed to relist in the first of these additional section 8002 studies. EPA will not lose any further time in determining the appropriate regulatory regime for these particular wastes, even though we plan to study further the feasibility of ground rules.

Dated: September 30, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-22831 Filed 10-8-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3093-9]

Hazardous Waste Management System; Proposed Exclusion from Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at one facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at one particular facility from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition for which we propose to grant an exclusion has been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on this proposed exclusion until October 24, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request hearing on this proposed exclusion by filing a request with Bruce R. Weddle, whose

address appears below, by October 20, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20560. Communications should identify the regulatory docket number: "F-86-MTPE-FFFFF".

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement) Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identifed in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).). Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as

well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the compliance point (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a final exclusion. Thus, a final exclusion will not be granted for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusion published today involves the following petitioner:

Michelin Tire Corporation, Sandy Springs, South Carolina.

I. Michelin Tire Corporation

A. Petition for Exclusion

Michelin Tire Corporation (Michelin), located in Sandy Springs, South Carolina, manufactures rubber slabs, textile cords and wire cables for tires. Michelin has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc aluminum plating on carbon steel;]5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. Michelin claims that this waste should be excluded because it does not meet the criteria for which it was listed.

Based upon the Agency's review of the petition, Michelin was granted a temporary exclusion in March of 1981 (see 46 *FR* 17196). The Agency's basis for granting the temporary exclusion was the low migration potential of the constituents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel. Since that time, the Hazardous Waste and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) The Agency, therefore, has re-evaluated Michelin's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) Evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

Michelin has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; results from total constituent and Oily Waste EP toxicity analyses of the waste for all the EP toxic metals, cyanide, and nickel; results from tests of the total oil and grease content of the waste, and ignitability, corrosivity, and reactivity data.

Michelin elected not to submit a list of the raw materials and feedstocks used in their manufacturing process. The Agency normally requests this information, as noted above, to determine whether constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern. Michelin was therefore requested to demonstrate that the petitioned waste contained no appendix VIII hazardous constituents

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

in concentrations exceeding regulatory concern. Michelin reviewed their raw materials to identify any materials which contained an Appendix VIII hazardous constituent or which, during processing could possibly form an Appendix VIII hazardous constituent reaction product or by-product. Michelin identified 182 Appendix VIII hazardous constituents which could be expected to be present or released during the facility's operation, and provided total constituent analyses for these Appendix VIII hazardous constituents.

Michelin manufactures rubber slabs, textile cords and wire cables used in the manufacturing of tires. Natural and synthetic rubber bales are chipped and mixed with rubber compounding ingredients. The rubber mixture is then milled, sized, cut, water cooled and pallatized. The resulting rubber slabs are sent to the textile tissue facility located on-site. At the textile tissue facility, glue is manufactured by mixing latex and other chemicals and applied to textile cords. The coated textile cords then travel through a drying tunnel to the calendar. The rubber slabs are again melted, mixed, and milled, and then fed to the calendar in strips. At the calendar, glue-coated textile cords and rubber strips are combined as sheets. The sheets of rubber and textile cords are wound on rolls and sent to other Michelin facilities. At the wire treatment facility, located on-site, coils of steel wire are annealed and coated with borax in order to facilitate drawing. The reduced diameter steel wire is again annealed and then electroplated with brass. The brass-plated wire is coated with borax and drawn for further diameter reduction. The brass-plated wire is twisted with other strands of brass-plated wire to produce a wire cable. The cable is wound up and sent to other Michelin plants.

Michelin's waste treatment plant treats all process wastes generated on-site, including: (1) Sanitary sewage; (2) Latex and glue waste; (3) Rubber chemical process waste; (4) Wash water from the rubber compounding sewer; (5) Boiler blowdown; (6) Cooling tower blowdown; (7) Wire treatment process wastes; (8) Wire treatment waste soap wastes; (9) Waste coolants/surface tanks; and (10) Washwater from the rubber chemical process sewer.

Sanitary waste is treated in a Diapac unit which uses aeration and seeding with activated sludge to biologically break down the sanitary wastes. The solids, after digestion, are sent to the sludge storage tank, and the effluent is sent to a rapid mixer. The rubber compounding process sewer wastes are separated. The sludge goes to the sludge storage tank, the skimmed oil is disposed of as hazardous waste, and the effluent is sent to the mixing tank. The latex and glue wastes, rubber chemicals process wastes, and the rubber compounding process sewer effluent are combined in a mixing tank for neutralization and flocculation. The solids settle out in an air flotation unit and are sent to the sludge storage tank, and the effluent is sent to the mixing tank.

The waste water from the wire treatment facility, waste coolant/surfactant, and washwater from the rubber chemical process sewer are combined and neutralized with lime. The combined wastewaters are then flocculated and clarified. The sludge is pumped to the sludge storage tanks and the treated effluent flows to the mixing tank. At the mixing tank, all of the resulting wastewaters are combined and rapidly mixed with lime, coagulants and polyelectrolytes. The mixture is flocculated and clarified. The effluent is sent to an aeration lagoon and the solids are sent to the sludge storage tank. The effluent from the aeration lagoon is chlorinated and discharged. All sludges are combined in the sludge storage tank. The pH of the combined sludges is corrected and the sludge is pumped to the flocpress for de-watering. The supernatant is pumped to a process sump and then to the rapid mix tank, and the filter press sludge is collected in a hopper. The hopper, when full, is emptied into the dumpster and transported to a landfill for disposal.

Michelin collected a total of four composite samples on December 23, 1985, January 15, 17, and 21, 1986.[3] Each composite sample was generated by dividing the 3.33 (feet) x 7.25 (feet) x 21.5 (feet) dumpster into eight zones and collecting eight full-depth trier core samples. Michelin, using the above methology also collected four samples on December 2, 15, 20, and 21, 1983; however, two samples were damaged during travel to the laboratory and were re-collected on January 12 and 13, 1984.

Michelin claims that the eight samples collected were representative of any variation of the listed and non-listed consitituent concentrations in the waste, and that their manufacturing and waste treatment process are uniform.

Total constituent and Oily Waste EP toxicity analysis for the listed constituents of concern and the non-listed constituents of concern revealed the maximum concentrations reported in Table 1 and 2, respectively.

TABLE 1.—MAXIMUM CONCENTRATIONS OF THE LISTED CONSTITUENTS FILTER CAKE

Constituents	Total constituent analyses (mg/kg)	OWEP/mobile metal concentrations (mg/1)
Cadmium	<0.2	<0.01
Chromium	15	<0.05
Nickel	64	0.26
Cyanide	<0.06	NA

NA = Not Analyzed.

TABLE 2.—MAXIMUM CONCENTRATIONS OF THE NON-LISTED CONSTITUENTS FILTER CAKE

Constituents	Total constituent analyses (mg/kg)	OWEP/mobile metal concentrations (mg/1)
Arsenic	<0.099	<0.0001
Barium	31	0.3
Lead	5.9	0.2
Mercury	<0.08	<0.004
Selenium	<0.06	<0.003
Silver	0.8	<0.01

Table 3 presents the maximum total constituent concentration for 182 of the Appendix VIII hazardous constituents which possibly could be constituents of Michelin's waste. Michelin claims that the remaining Appendix VIII hazardous constituents are not expect to be present in their processes, and that the formation of any of these compounds is highly unlikely.[4] Michelin generates a maximum of 400,000 gallons (approximately 2,000 cubic yards) of waste filter cake per year.

Michelin's filter cake had a maximum oil and grease content of 5 percent and did not exhibit the characteristics of ignitability, corrosivity, or reactivity.

TABLE 3.—Analysis of Appendix VIII Constituents

Constituents of concern	Maximum total concentration analyses (ppm)
Acrylonitrile	<1
Allyl alcohol	<5
4-Aminobiphenyl	<1
Aniline	<1
Benzenethiol	<5
Benzidine	<5
P-Benzoquinone	<5
Benzotrichloride	<1
Bis-2-(ethylhexyl)phthalate	<1

[3] Michelin's initial demonstration was based on seven regular EP analysis conducted on samples collected over 13 months. Since the waste's oil and grease content exceeds one percent, Oily Waste EP analyses should be used. The EP sample results were not considered in our re-evaluation.

[4] Michelin submitted a rationale for eliminating the need to test for any additional Appendix VIII hazardous constituents. This rationale includes elimination of unstable compounds or those reactive in water; and those for which there are no approved analytical methods.

TABLE 3.—Analysis of Appendix VIII Constituents—Continued

Constituents of concern	Maximum total concentration analyses (ppm)
Butyl benzyl phthalate	<1
2-sec-Butyl-4,6-dinitrophenol	<5
P-Chloroaniline	<1
P-Chloro-m-cresol	<1
2-Chlorophenol	<1
Dibenz(a,h)acridine	<5
Dibenza(a,j)acridine	<5
Di-n-butyl phthalate	<1
2,4-Dichlorophenol	<1
2,6-Dichlorophenol	<1
Diethyl phthalate	<1
7,12-Dimethylbenzanthracene	<1
2,4-Dimethyl phenol	<1
Dimethyl phthalate	<1
2,4-Dinitrophenol	<5
Di-n-octyl phthalate	<1
Diphenylamine	<1
Ethyl methacrylate	<5
Methacrylonitrile	<1
Methyl methacrylate	<1
4-Nitrophenol	<5
N-Nitroso-di-n-butylamine	<1
N-Nitroso-dimethylamine	<5
Pentachlorophenol	<1
Phenylenediamine	<5
2-Picoline	<1
Pronamide	<1
Pyridine	<1
Resorcinol	<1
Tetraethylpyrophosphate[1]	<5
2,3-Toluenediame	<1
3,4-Toluenediamine	<1
2,6-Toluenediamine	<1
Chloroform	<0.010
1,2-Dichloroethane	<0.010
1,1-Dichloroethylene	<0.010
Benzene	<0.010
Naphthalene	<0.030
Anthracene	<0.030
Toluene	0.3
Dibenz Pyrene	<0.160
Indeno (1,2,3-cd) pyrene	<0.160
Phenol	<0.100
o-Cresol	<0.100
m-Cresol	<0.100
p-Cresol	<0.100
Acenaphthene	<0.030
Fluorene	<0.030
Phenanthrene	<0.052
Dibenez (a,h) anthracene	<0.160
Pyrene	<0.040
Fluoranthene	<0.040
Benz (a) anthracene	<0.040
Chrysene	<0.040
Benezo (d) pyrene	<0.040
Benzo (b) fluoranthene	<0.040
Thiuram	14
Maleic Anhydride	50
Ethyl benzene	0.5
Styrene	31.0
Acetonitrile	<0.3
Acetyl chloride	<0.3
Acrolein	<0.5
Acrylamide	<0.5
Arsenic and compounds, NOS* as As[2]	<0.5
Arsenic acid as As	<0.5
Arsenic pentoxide as As	<0.5
Arsenic trioxide as As	<0.5
Barium and compounds, NOS* as Ba[2]	31
Barium cyanide as CN	<0.06
Benezenearsonic acid	<0.5
Benzene, dichloromenthyl	<0.3
Beryllium and compounds, NOS* as Be	<1
Bis(2-chloroethoxy) methane	<0.3
Bis(2-chloroethyl) ether	<0.3
Bis(2-chloroisoprophyl) ether	<0.3
Bis(chloromethyl) ether	<0.3
Bromacetone	<0.3
Bromomethane	<0.3
Cadmium and compounds, NOS* as Cd[2]	<1
Calcium chromate as Cr[2]	<13
Calcium cyanide as CN[2]	<0.06
Carbon disulfide	<0.3
Carbon oxyfluoride as F	<0.7
Chloral	<0.3
Chlorinated benzenes, NOS*	<0.3

TABLE 3.—Analysis of Appendix VIII Constituents—Continued

Constituents of concern	Maximum total concentration analyses (ppm)
Chlorinated fluorocarbons, NOS*	<0.3
Chlorinated naphthalene, NOS*	<0.3
Chlorinated phenol, NOS*	<0.3
Chloroalkyl ethers NOS*	<0.3
Chlorobenzene	<0.3
1-Chloro-2,3-epoxypropane	<0.3
2-Chloroethyl vinyl ether	<0.3
Chloromethane	<0.3
Chloromethyl methyl ether	<0.3
Chromiun and compounds, NOS* as Cr[2]	15
Copper cyanide as CN	<0.06
Cyanides (soluble salts and complexes) NOS*	<0.06
Cyanogen	<0.06
Cyanogen bromide	<0.06
Cyanogen chloride	<0.06
1,2-Dibromo-3-chloropropane	<0.3
1,2-Dibromoethane	<0.3
Dibromomethane	<0.3
1,4-Dichloro-2-butene	<0.3
Dichlorodifluoromethane	<0.3
1,1-Dichloroethane	<0.3
trans-1,2-Dichloroethane	<0.3
Dichloroethylene, NOS*	<0.3
Dichloromethane	<0.3
Dichlorophenylarsine	<0.5
Dichloropropane, NOS*	<0.3
1,2-Dichloropropane	<0.3
Dichloropropanol, NOS*	<0.3
Dichloropropene, NOS*	<0.3
Diethylarsine as As[2]	0.3
Diisopropylfluorophosphate as F	<0.7
1,4-Dioxane	<0.3
Ethyl cyanide	<0.06
Ethylene oxide	<0.3
Fluorine as F	<0.7
2-Fluoroacetamide	<0.7
Fluoroacetic acid, sodium salt	<0.7
Formaldehyde	<3
Formic acid	<4
Halomethane, NOS*	<0.3
Hexachlorophene	<0.3
Hexachloropropene	<0.3
Hydrocyanic acid as CN	<0.06
Hydrofluoric acid	<0.7
Hydroxydimethylarsine oxide as As	<0.5
Iodomethane	<0.3
Isobutyl alcohol	<0.3
Lead and compounds, NOS* as Pb[2]	<10
Lead acetate as Pb	<10
Lead phosphate as Pb	<10
Lead subacetate	<10
Maleic hydrazide	<5
Mercury and compounds, NOS* as Hg[2]	<0.05
Mercury fulminate	<0.05
Methanethiol	<0.3
Methyl ethyl ketone	<0.3
Nickel and compounds, NOS* as Ni[2]	64
Nickel carbonyl as Ni	<10
Nickel cyanide as CN	<0.06
Pentachloroethane	<0.3
Phenylmercury acetate as Hg	<0.05
Potassium cyanide as CN	<0.06
Potassium silver cyanide as CN	<0.06
Selenious acid	<0.5
Selenium and compounds, NOS*[2]	<0.5
Selenium sulfice	<0.5
Selenorures	<0.5
Silver and compounds, NOS* as Ag[2]	<3
Silver cyanide as CN[2]	<0.06
Sodium cyanide as CN[2]	<0.06
Strontium sulfide as Sr	8
Tetrachloroethane, NOS*	<0.3
1,1,1,2-Tetrachloroethane	<0.3
1,1,2,2-Tetrachloroethane	<0.3
Tetrachloromethane	<0.3
1,1,1-Trichloroethane	<0.3
1,1,2-Trichloroethane	<0.3
Trichloroethane	<0.3
Trichloropropane, NOS*	<0.3
1,2,3-Trichloropropane	<0.3
Vanadic acid, ammonium salt as V	<11
Vanadium pentaoxide as V	<11
Vinyl chloride	<0.3

[1] An analytical standard was not available, therefore the detection limit is an estimate.
[2] These constituents were evaluated using the Oily Waste EP procedure.
<=Denotes detection limit.

B. Agency Analysis and Action

Michelin has demonstrated that the filter cake generated at their Sandy Springs, South Carolina facility is non-hazardous. The Agency believes that the samples analyzed reflect the day to day variation in manufacturing and treatment processes. The manufacturing and treatment processes are believed to be uniform and consistent since the facility does not perform as a job shop or have seasonal product variations. Thus, the Agency considers the sampling procedures used by Michelin to be adequate, and that the reported analytical data are representative of the waste filter cake.

The Agency has evaluated the mobility of the inorganic constituents from Michelin's waste using the vertical and horizontal spread (VHS) model.[5] The Agency's evaluation, using Michelin's annual volume of 2,000 cubic yards of filter cake and the maximum mobile metal concentration for the listed constituents of concern in the VHS model has generated the compliance point concentrations shown in Table 4. (Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations).

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.001	0.01
Chromium	<0.006	0.05
Nickel	0.029	0.35
Cyanide	[1] <0.007	0.2

[1] Calculated using the maximum total cyanide concentration with no assumed dilution (worst-case analysis).

The filter cake exhibited cadmium and chromium levels (at the compliance point) below the National Primary Interim Drinking Water Standards, and a nickel concentration below the Agency's interim standard.[6] Cyanide levels are significantly below the U.S. Public Health Service's suggested Drinking Water Standard of 0.2 mg/l,[7] and reactive cyanide levels, are below the Agency's interim standard of 250 ppm.[8]

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[6] 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim regulatory standard for nickel (0.350 ppm).

[7] Drinking Water Standards, U.S Public Health Service, Publication No. 956, 1962 (0.2 ppm).

[8] See internal Agency memorandum dated July 12, 1985, regarding "Interim Agency Threshold for Toxic Gas Generation" (in the RCRA public docket).

The Agency has also evaluated the mobility of the non-listed EP toxic metals in Michelin's filter cake using the VHS model. The model generated compliance point concentrations for each of these metals as shown in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.001	0.001
Barium	0.033	1.0
Lead	0.022	0.05
Mercury	<0.001	0.002
Selenium	<0.001	0.01
Silver	<0.001	0.05

The calculated compliance concentrations of arsenic, barium, lead, mercury, selenium, and silver are all below the level of regulatory concern.

The Agency also calculated the mobile portion of the total constituent concentrations for the organic constituents listed in Table 3 using the Agency's Organic Leachate Model (see 51 FR 27061–27064, July 29, 1986). The leachable content of each constituent was then evaluated using the VHS model.

As indicated in Table 3, most of the constituents analyzed were detected using the detection limits specified; therefore, each constituent was analyzed using the reported detection limit. Table 6 presents the results of the OLM/VHS analysis for those constituents actually detected. Table 7 presents the results of the OLM/VHS analysis for the constituents which exhibited failing compliance point concentrations when using the detection limit as the maximum total constituent concentration.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (MG/L)

Constituents	Compliance point concentrations		Regulatory standards [2]
	Base-line	95% confidence	
Ethyl benzene	0.0009	0.0012	3.5
Maleic anhydride	0.29	0.14	[3] NA
Thiruam	0.0014	0.0018	[3] NA
Toluene	0.001	0.0014	10.5
Styrene	0.020	0.024	7.0

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards are available in the RCRA public docket.

[3] A regulatory standard does not currently exist; however, due to the sufficiently low compliance point concentration, the Agency is not concerned with this material.

TABLE 7.—CONSTITUENTS WHICH FAIL THE OLM/VHS ANALYSIS WHEN USING THE REPORTED DETECTION LIMITS, AS THE MAXIMUM TOTAL CONSTITUENT CONCENTRATION (PPM)

Constituents	Compliance point concentrations		Regulatory standards [2]
	Base-line	95 percent confidence	
Acrylanitrile	0.0157	0.0228	1.5.x10–4
Benzidine	0.006	0.008	1.5x10–7
2-Chlorophenol	0.01	0.015	5.0x10–5
Bis (2-chloroethyl)ether	0.003	0.004	3.1x10–5
Bis(chloromethyl)ether	0.004	0.006	3.0x10–9
trans-1,2-Dichloroethane	0.003	0.004	3.8x10–4
1,1,2,2-Tetrachloroethane	0.002	0.0028	0.0018
Vinyl chloride	0.0019	0.0029	0.002
1,2-Dichloroethane	0.0003	0.004	3.8x10–4
Benz(a)anthracene	3.8x10–6	6.6x10–6	3.0x10–6

[1] Since the OLM has not been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated.

[2] An explanation of the derivation of these regulatory standards are available in the RCRA public docket.

The detection limits used to calculate the compliance points were achieved using the recommended extraction and analytical procedures from Test Methods for Evaluating Solid Waste (SW–846). These methods cannot achieve low enough detection limits to pass the OLM/VHS analysis for these constituents. Where hazardous constituents in a waste are determined to be not detected using appropriate analytical methods, the Agency will, as a matter of policy, not use those constituents as a basis to regulate the waste as hazardous. The consituents in Table 7, therefore, are not considered to be of regulatory concern. The Agency is not indicating that these detection limits are appropriate minimum limits for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix.[9]

The Agency was unable to generate a compliance point concentration for 124 constituents since either a solubility and/or a regulatory standard for each constituent is not currently available. When the Agency cannot determine either the compliance point concentration or a regulatory standard, that constituent would not be grounds for the Agency to continue to regulate the waste as hazardous.

The Agency notes that the remaining 48 constituents passed the OLM/VHS analysis, and therefore, are not of concern to the Agency. Based on the Agency's review of Michelin's process and discussions with Michelin regarding the possibility of other Appendix Viii hazardous constituents being used or being formed in the waste, we conclude that no other Appendix VIII hazardous constituents are likely to be present, or formed as reasction or by-products in Michelin's waste.

The Agency, therefore, concludes that Michelin's waste, generated at their Sandy Springs, South Carolina facility does not present a significant hazard to either human health or the environment. The Agency believes that the waste should continue to be considered non-hazardous. The Agency, therefore, proposes to grant Michelin's petition for exclusion of its wastewater treatment sludges, listed as EPA Hazardous Waste No. F006. (The Agency notes that the inclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process).[10] In addition, Michelin is still obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

II. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather that increases, the existing requirements for

[9] Detection limits required for a liquid waste may be orders of magnitude lower due to the technical ability ro read lower detection limits on "clean" liquid wastes. The Agency further notes that, as the recommended clean-up procedures and analytical tests improve, the required detection limits will decrease for petitioners submitting petitions at that time.

[10] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous however, until a new exclusion is granted.

persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 USC 6921.

Dated: October 3, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Michelin Tire Corporation.	Sandy Springs, SC	Dewatered wastewater treatment sludge (EPA Hazardous Wastes No. F006) generated from electroplating operations after [insert date of final rule's publication].

[FR Doc. 86-22940 Filed 10-8-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3093-8]

Hazardous Waste Management System; Proposed Exclusions from Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at four facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at four particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated both of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions until October 24, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 20, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-CPPE-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRC regulation docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the factors for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the factors for which the waste was originally listed), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the factors for which the waste was listed, it then will evaluate the waste with respect to other factors or contaminants, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating the volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2 and (a)(3. Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still

will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. For wastes that are managed in a landfill, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the waste from four petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All four of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those from requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Capitol Products Corporation, Kentland, Indiana;
Lincoln Plating Company, Lincoln, Nebraska;
Maytag Company, Newton, Iowa;
Windsor Plastics, Inc., Evansville, Indiana.

I. Capitol Products Corporation

A. Petition for Exclusion

The Capitol Products Corporation (Capitol), a subsidiary of Ethyl Corporation, located in Kentland, Indiana, has petitioned the Agency to exclude their wastewater treatment sludge. The facility manufacturers aluminum extrusions of various forms, sizes, and finishes for end uses primarily in the building materials trade. The sludge presently is listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed). Capitol has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which the waste originally was listed.

Based upon the Agency's review of their petition, Capitol was granted a temporary exclusion on March 18, 1981 (see 46 FR 17199). The basis for granting the exclusion (at that time) was negligible concentrations of cyanide, and the low migration potential of chromium in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Capitol. As a result of HSWA, the Agency has re-evaluated Capitol's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Capitol's petition.

In support of their petition, Capitol has submitted a detailed description of its manufacturing and treatment processes (including schematic diagrams);[3] total constituent analyses and EP toxicity test results of the sludge for total chromium; and analytical results for total cyanide. Capitol also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium, silver, and nickel; results for total sulfide analyses; and results for total oil and grease analyses on representative waste samples. Capitol further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants, other than those for which the waste originally was listed, are present in the waste at levels of regulatory concern.

Capitol uses a manufacturing process that involves the cleaning and conversion coating of aluminum extrusions to prepare the surfaces for finishing and painting. The pre-paint treatment process uses a five-stage series of cleaning and rinsing tanks. Capitol claims that cyanide is not used in their process. The chromium-bearing wastewater originating from this manufacturing process is treated by a continuous reduction/neutralization process that is controlled by automatic oxidation-reduction potential instruments. The wastwater treatment process involves pH adjustment with sulfuric acid, reduction of hexavalent chromium to a trivalent state with sulfur dioxide, and pH adjustment and chromium precipitation with lime.

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Capitol has claimed their raw materials list and process descriptions as confidential business information (CBI). This information, therefore, is not available in the public docket.

Flocculants are added to enhance sludge settling. The clarified sludge is dewatered using a vacuum filter and subsequently hauled away for off-site land disposal. Capitol petitoned the Agency to exclude this dewatered wastewater treatment sludge. Capitol claims that this wastewater treatment sludge is non-hazardous due to the immobile nature of chromium and negligible levels of cyanide in the sludge. In addition, Capitol claims that paints and solvents used at the facility cannot contact the chromium-bearing wastewater stream, and thus cannot contribute toxicants to the wastewater treatment sludge. Capitol, therefore, believes that the dewatered sludge is not hazardous for any other reason.

Capitol's initial petition was based upon one grab sample collected from the vacuum filter in 1980. Following the Agency's request for additional data, four grab samples were collected in November of 1983, four composite samples were collected in April of 1985, and six composite samples were collected in October of 1985. The Agency requested additional sampling and analyses which more precisely quantified the leachable levels of mercury, silver, and selenium. Following the Agency's request, Capitol collected and analyzed twelve composite samples in May and June of 1986. The 1985 and 1986 composite samples were composed of grab samples collected hourly from the vacuum filter while it was operating over an 8-hour work shift. Overall, a total of 27 samples were collected and analyzed for various parameters. Capitol claims that all of the samples collected, except one, are representative of any variation of the listed and non-listed constituent concentrations in the waste because the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. Capitol also claims that there is no significant seasonal variation in the amount of waste generated. Capitol claims, however, that a November 1983 sample is not representative because their sulfonator was malfunctioning. As a result, the hexavalent chromium was not sufficiently reduced. This sample generated increased chromium extracts levels due to the presence of higher concentrations of the more mobile hexavalent chromium in the waste.

Total constituent and EP toxicity analyses of the dewatered sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1—MAXIMUM CONCENTRATIONS (ppm)

Listed constituents	Total constituent analyses	EP leachate analyses
Chromium (total)	5,400	[1] 1.5
Cyanide	<0.25	[2] <0.012

<: Denotes concentrations below the detection limit.

[1] Capitol claims that the reported maximum extract value of 1.9 ppm is not representative due to process equipment malfunction. The next highest reported maximum extract value was 1.5 ppm.

[2] Free and leachable cyanide tests were not required, since cyanide is not used in the process and the total cyanide content was low. Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Total constituent and EP toxicity analyses of the dewatered sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2—MAXIMUM CONCENTRATIONS (ppm)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<8	<0.1
Barium	35	<0.01
Cadmium	<1	<0.05
Lead	<6	<0.1
Mercury	1	0.00097
Nickel	13	<0.1
Selenium	<6	0.037
Silver	1	0.005

<: Denotes concentrations below the detection limit.

The maximum total oil and grease value reported was 0.08 percent. Capitol also analyzed their dewatered sludge for total sulfides; the maximum concentration was reported to be 0.10 ppm. Capitol also submitted a list of all raw materials used in their manufacturing and chromium-bearing wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Capitol also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Capitol claims to generate approximately 120 cubic yards of sludge per year.

B. Agency Analysis and Action

Capitol has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that 26 of the 27 samples collected by Capitol from the vacuum filter were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in raw materials can be expected either when the facility performs as a job shop or when the production line changes seasonally. The Agency believes that the sampling period used by Capitol was long enough to cover any scheduled changes in the product line, since the petitioner has verified that there is no significant seasonal variation in the process and the raw materials used do not vary. Accordingly, the samples are representative of the waste generated by Capitol at its Kentland, Indiana facility. The Agency accepts Capitol's claim regarding the non-representative nature of the November 1983 sample.

The Agency has evaluated the mobility of the listed constituents from Capitol's waste using the vertical and horizontal spread (VHS) model.[4] The VHS model generated compliance point values using the reported maximum annual waste generation rate of 120 cubic yards year and the maximum reported extract levels as input parameters. The calculated compliance point concentrations for the listed constituents are reported in Table 3. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 3 —VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/DEWATERED SLUDGE (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.046	0.05
Cyanide	<0.0004	0.2

The dewatered sludge exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard. Chromium levels in the sludge, therefore, are not of regulatory concern. The sludge exhibited cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[5] The waste's maximum sulfide and cyanide contents (0.01 and <0.25 ppm, respectively) also are low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is

[4] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[5] Drinking Water Stanadards, U.S. Public Health Services, Publication 946, 1962 (0.2 ppm).

a property of the reactive characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that the other EP toxic metals and nickel are not present in the dewatered sludge at levels of regulatory concern. The compliance point values generated from these extract levels are displayed in Table 4.

TABLE 4—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS DEWATERED SLUDGE (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.003	0.5
Barium	<0.0003	1.0
Cadmium	<0.002	0.01
Lead	<0.0003	0.05
Mercury	0.00003	0.002
Nickel	<0.003	0.35
Selenium	0.001	0.01
Silver	0.0002	0.05

Capitol also has demonstrated that the sludge does not demonstrate the characteristics of ignitability and corrosivity. The Agency also reviewed Capitol's raw material list and material safety data sheets for each component in the raw materials list. The Agency has concluded from this review that no other Appendix VIII harzardous constitutents, other than those tested for, are present in the waste.

The Agency believes, based on the constituents and factors evaluated, that Capitol has demonstrated that the dewatered sludge is non-hazardous. The Agency, therefore, proposes to grant an exclusion to Ethyl Corporation's Capitol Products for its wastewater treatment sludge generated at its Kentland, Indiana facility, as described in its petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[6] In addition, as a generator of a solid waste, the petitioner is still obligated to periodically determine whether the waste exhibits any of the hazardous waste characteristics.

II. Lincoln Plating Company

A. Petition for Exclusion

Lincoln Plating Company (Lincoln), located in Lincoln, Nebraska, is involved in a wide variety of electroplating, anodizing, and metal finishing processes for other industrial companies. Lincoln has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling on aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Lincoln was granted a temporary exclusion on November 22, 1982 (See 47 FR 52668). EPA granted the exclusion (at that time) since the cadmium and total chromium concentrations were well below the maximum EP toxicity limits; nickel and cyanide concentrations were also not of regulatory concern. The low leachate levels indicated that the constituents of concern were present in essentially an immobile form. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. As a result, the Agency has re-evaluated Lincoln's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is EPA's re-evaluation of Lincoln's petition.

In support of their petition, Lincoln has submitted a detailed description of their manufacturing and treatment processes (including schematic diagrams); results from total constituent and EP toxicity analysis for cadmium, total chromium, and nickel; and total constituent and distilled water leachate test results for cyanide. Lincoln also submitted total constituent analyses and EP toxicity results for arsenic, barium, lead, mercury, selenium, and silver; multiple extraction analyses results; and total oil and grease analyses on representative waste samples. Lincoln further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Lincoln is a job shop plater and supplies various finishes to meet the needs of local manufacturers. Lincoln groups the manufacturing processes into 13 different production lines. The variety of plating processes include: anodizing, dye anodizing, and chromate conversion coating on aluminum; hardcoat anodizing of aluminum and solder plating (tin and lead); chloride zinc plating on steel; alkaline zinc, nickel, tin, and cadmium plating; copper, silver, and iron manganese phosphate coating; electroless nickel, sulfamate nickel, nickel chrome, and fluoride chrome plating; hard chromium plating on steel; blackk oxide coating on steel; and pickling and etching. There is some painting done at the facility; however, Lincoln claims these wastes are entirely segregated from the petitioned wastestream.

The waste treatment facility is generally a continuous operation, although batch treatment of cyanide and chrome wastes does occur. Wastewater from each line is piped directly to the wastewater treatment facility. Sodium hydrosulfide is used to treat hexavalent chrome on a batch basis in the alkaline cleaners on the chromium plating lines. Cyanide solutions from the processing tanks are also batch treated with calcium hypochlorite (for pH adjustment) and sodium hypochlorite solution. Wastewaters from the processing lines are collected in sumps based on whether they are chromium, acid, or alkaline. The chromium-bearing wastewaters are pretreated by reduction using sulfur dioxide before mixing with the other streams. The acid and alkaline wastewaters serve to provide pH adjustment as needed. A lime slurry (calcium oxide) is also used to adjust pH. The combined waste streams undergo polymer flocculation, clarification, and pressure filtration for sludge dewatering. After dewatering, portland cement is added to the sludge. Lincoln claims that its treated wastewater treatment sludge is non-hazardous because it does not meet any of the criteria for which it was listed and is not hazardous for any other reason.

Six composite samples were collected from the sludge bucket after the dewatered filter cake had been mixed with the portland cement.[7] An

[6] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

[7] Lincoln submitted (in August and December, 1985) analytical results from 15 composite samples taken over a 1 and 1/2 year period. It was determined, however, that due to the wastewater treatment process changes at Lincoln (addition of cement), the EP toxicity test should be run on samples ground to 100 mesh, and that additional samples should be subjected to the Multiple Extraction Procedure (MEP). Only these six samples, therefore, are considered in the evaluation of the petition.

accumulation of approximately 12 hours of generated sludge is dumped from the filter into the mixer; each composite sample was composed of grab samples collected from seven random locations within the sludge bucket. The grab samples were collected at random times over a 5 week period. Lincoln claims that, although the facility could be considered a job shop, all of the manufacturing processes used at the facility are in full operation during an average day. In addition, Lincoln claims that the use of raw materials does not vary substantially over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

Total constituent and EP toxicity analyses (100 mesh) of the sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1—MAXIMUM CONCENTRATIONS (PPM)

Constituent	Total constituent analyses	EP leachate analyses
Cd	4,000	0.04
Cr (total)	11,200	[2] 0.25
Ni	14,200	0.15

TABLE 1—MAXIMUM CONCENTRATIONS (PPM)—Continued

Constituent	Total constituent analyses	EP leachate analyses
CN	<3.6	0.32

[1] The EP leachate value and maximum constituent analyses reported in Table 1 represent the maximum levels reported for the particular metal and do not necessarily represent the same sample.

[2] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

Total constituent and EP toxicity analyses of the sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Constituent	Total constituent analyses	EP leachate analyses
AS	9.8	0.15
Ba	1,350	1.3
Pb	2,000	0.19
Hg	<0.1	0.00009
Se	0.13	<0.03
Ag	16.0	<0.01

Multiple Extraction test date for both the listed and non-listed EP toxic metals revealed the concentrations reported in Table 3.

TABLE 3.—MULTIPLE EXTRACTION CONCENTRATIONS (ppm)

Extraction Number	Metal								
	1	2	3	5	5	6	7	8	9
As	0.01	<0.001	0.004	<0.001	0.19	0.004	0.011	0.009	0.009
Ba	0.19	0.08	0.16	0.10	<0.10	<0.01	<0.01	<0.001	<0.001
Cd	<0.03	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Cr	0.1.	<0.05	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Pb	<0.08	<0.05	<0.05	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Hg	0.0006	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0002
Ni	<0.04	<0.05	<0.04	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02
Se	<0.03	<0.003	<0.003	<0.003	<0.003	<0.003	<0.003	<0.003	<0.002
Ag	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01

The maximum total oil and grease value reported was 0.22 percent. Lincoln also submitted a list of all raw materials used in their manufacturing and wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process, and that formation of any of these constituents is highly unlikely. Lincoln also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Lincoln claims that the maximum annual generation rate of the sludge is 204 cubic yards.

B. Agency Analysis and Action

Lincoln has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the composite samples collected from the sludge over the 5 week period were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The Agency also believes, based on the petitioner's process description, that the portland cement and filter cake are uniformly mixed. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Although Lincoln operates as a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. The Agency believes that Lincoln's sampling period was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The Agency, therefore, believes that the samples are representative of the petitioned waste.

The Agency has evaluated the mobility of the listed constituents from Lincoln's waste using the vertical and horizontal spread (VHS) model.[8] VHS model compliance point values were calculated using the maximum reported waste generation rate of 204 cubic yards per year and the maximum reported extract levels as input parameters. These compliance point concentrations are exhibited in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituent	Compliance point concentrations	Regulatory standards.
Cd	0.001	0.01
Cr (Total)	0.008	0.05
Ni	0.005	0.35

The sludge exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water standards; cyanide levels below the U.S. Public Health Service's suggested drinking water standard;[9] and nickel levels below the Agency's Interim Health Advisory.[10] The total cyanide levels in the waste are also below the air threshold limit set by the American Conference of Governmental Hygienists.[11] Cyanide, therefore, is not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 5. In addition, the MEP data reported in Table 3 indicates that the sludge exhibits long-term stability by leaching non-hazardous levels of the metals after multiple synthetic acid rain extractions.

[8] See footnote 4.

[9] See footnote 5.

[10] Pending the completion of current EPA studies on health effects of nickel, the Agency's interim health advisory for nickel is 350 ppm for the purpose of delisting petitions. This standard is explained at 50 FR 20239–48, May 15, 1985. Also see 51 FR 33639, September 22, 1986.

[11] See Documentation of Threshold Limit Values for Substances in Workroom Air. American Conference of Governmental Industrial Hygienists, third edition, 1971 Cincinnati, Ohio.

The compliance point values generated from these extract levels are displayed in Table 5. In addition, the MEP data reported in Table 3 indicates that the sludge exhibits long-term stability by leaching non-hazardous levels of the metals after multiple synthetic acid rain extractions.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituent	Compliance point concentrations	Regulatory standards
As	0.005	0.05
Ba	0.04	1
Pb	0.006	0.05
Hg	<0.0001	0.002
Se	0.0009	0.01
Ag	0.0003	0.05

The Agency also reviewed Lincoln's raw materials lists and Material Safety Data Sheets for each component in the raw material lists. The Agency has concluded from this review that no other Appendix VIII toxicants could enter the waste treatment system.

The Agency believes that Lincoln's treatment process generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Lincoln Plating Company, Lincoln, Nebraska, for its wastewater treatment sludge, as described in its petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the treatment process).[12] In addition, as a generator of a solid waste, the petition is still obligated to periodically determine whether the waste exhibits the hazardous waste characteristics.

III. Maytag Company

A. Petition for Exclusion

The Maytag Company (Maytag), located in Newton, Iowa, is involved in the manufacture of washing machines. In November 1980, Maytag petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Maytag was granted a temporary exclusion in August 1981 (see 46 FR 40159–40160). The Agency's basis for granting the temporary exclusion was the low migration potential of the constituents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste were listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Maytag. This information was submitted on November 6, 12, and 14, 1985, March 10, 1986, and September 16, 1986. As a result, the Agency has re-evaluated Maytag's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) evaluate the wastes for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous.[13]

Maytag has submitted a detailed description of its production and wastewater treatment processes, including a schematic diagram; total constituent analyses and EP toxicity test results of the sludge from cadmium, total chromium, nickel, and lead; and total constituent analyses and distilled water leach test results for cyanide. Maytag also submitted results from total constituent analyses and EP toxicity tests for arsenic, barium lead, mercury, selenium, and silver; and total oil and grease analysis on representative waste samples collected from each of three sludge settling tanks. In addition, Maytag submitted a list of raw materials used in the manufacturing process. The additional information was submitted, as indicated above, to determine whether any hazardous constituents other than those for which the waste was originally listed could be present in the waste at levels of regulatory concern.

Maytag manufactures clothes washing machines. In the production process, the washing machine components are pickled, electroplated, coated, or painted. Chromium wastes are segregated and reduced by sulfur dioxide prior to mixture with the remaining process wastewater. Equalization, lime neutralization, aluminum sulfate and polymer flocculation, and primary clarification follow.[14] Each day's wastewater treatment sludge is pumped to one of three (one day capacity) sludge settling tanks. After settling, the supernatant liquid is decanted, and lime slurry is added. The sludge is then dewatered on a batch basis by vacuum filtration, and placed in dumpsters for disposal.

The Agency also reviewed the material safety data sheets submitted by Maytag, identifying the following eight Appendix VIII hazardous constituents: formic acid, formaldehyde, isobutyl alcohol, hydrazine, tetrachloroethylene, 1,1,1-trichloroethane, toluene, and methyl ethyl ketone, and the following three classes: aliphatic ketones, aromatic hydrocarbons, and petroleum emulsions as components of raw materials used in the manufacturing process that could possibly be expected to be present in the waste. EPA, therefore, requested that Maytag supply total constituent analyses for the eight Appendix VIII hazardous constituents and the chemicals contained in the three classes of materials. The total constituent analyses for the resulting 30 Appendix VIII hazardous constituents are presented in Table 1.

TABLE 1.—ANALYSIS OF APPENDIX VIII HAZARDOUS CONSTITUENTS

Constituent	Maximum total concentration (mg/kg)
Toluene	0.008
1,1,1-Trichloroethane	0.003
Tetrachloroethylene	0.02
Dichloromethane	0.012
Chloroform	0.003
Methyl ethyl ketone	<0.01

[12] See footnote 6.

[13] On November 6, 1985, Maytag expanded its petition to include EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. Maytag had previously considered conversion coating as an electroplating operation and had assumed the wastewater treatment sludges from this operation were described by EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations. In fact, all of the constituents of concern in Waste No. F019 are included in the constituents of concern in Waste No. F006. In addition, none of the wastewater treatment sludges from any of the Maytag's production and wastewater treatment processes are segregated.

[14] Clarified water (except for overflow to the publicly owned treatment works) in filtered, softened and recycled to the plant. Excess filtered water is directly discharged to a stream under a NPDES permit.

TABLE 1.—ANALYSIS OF APPENDIX VIII HAZARDOUS CONSTITUENTS—Continued

Constituent	Maximum total concentration (mg/kg)
Methyl isobutyl ketone	(1)
Di-n-butyl-phthalate	<7
Bis (2-ethyl hexyl) phthalate	<7
Butyl benzyl phthalate	<4
2-Chlorophenol	<0.66
2,4-Dichlorophenol	<6
Diethyl phthalate	<6
Dimethyl phthalate	<4
Phenol	<4
2,4,6-Trichlorophenol	<0.66
Chlorobenzene	<0.001
Naphthalene	<5
Fluoranthene	<8
Benzo(b)fluoranthene	<0.66
Benzo(k)fluoranthene	<0.66
Chrysene	<2
Benzo(a)anthracene	<0.66
Dibenzo(a,h)anthracene	<0.66
Benzo(a)pyrene	<0.66
Di-n-octyl phthalate	<10
Hydrazine [2]	$<3.2 \times 10^{-105}$
Formaldehyde	<1
Formic acid	(1)
Isobutyl alcohol	(1)

< Denotes concentrations below detection limit.
[1] Not analyzed.
[2] Concentration determined by mass-balance demonstration using the Nernst equation. The Nernst equation is used to determine the rate of consumption (in moles) of the reactants and formation products (in moles) under a given set of chemical conditions.

Twenty-two of the Appendix VIII hazardous constituents were not found in the sludge at detectable levels and analyses for formic acid, isobutyl alcohol, and methyl isobutyl ketone were not performed. Maytag claims that the three Appendix VIII hazardous constituents not tested for, formic acid, methyl isobutyl ketone and isobutyl alcohol (listed for corrosivity and ignitability, respectively), are not present in their wastewater treatment sludge in concentrations of regulatory concern since the waste is neither corrosive nor ignitable. Maytag further claims, through a mass-balance demonstration, that the maximum concentration of formic acid in the wastewater is 30 mg/l.

To characterize the wastewater treatment sludge and adequately show its variability, 21 samples were collected over a two-month period, including a two-hour period, including a two-week period when samples were collected on five consecutive days each week. Maytag collected five grab samples at roughly two-hour intervals, and composited all five grab samples each sampling day. An additional four samples wre collected on August 5, 6, 7, and 11, 1986, using the above procedure, and analyzed for total constituent concentration. (These analyses were required to demonstrate a lower detection limit necessary for several organic constituents.)

The total constituent analyses and EP toxicity analyses of the sludge for the listed constituents and the non-listed metals found the maximum concentrations presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Constituents	Maximum total concentration analyses (ppm)	Maximum EP leachate concentration analyses (ppm)
Cd	<0.5	<0.01
Cr (total)	2,020.0	0.27
Ni	1,200.0	0.73
CN (total)	1.29	[1] <0.01
As	4.5	<0.005
Ba	1,470.0	5.7
Pb	57.0	0.021
Hg	<0.5	<0.001
Se	<0.2	<0.005
Ag	<1.0	0.01

[1] From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedure.

As three of the 21 samples had an oil and grease content of between 1.0 and 1.2 percent by weight (wet basis), an Oily Waste EP toxicity analysis was also performed on these three samples for both the listed constituents and for the non-listed metals. The maximum values of the mobile metal concentrations of these three samples are presented in Table 3. The remaining samples had a maximum oil and grease content of 0.9 percent with a mean content of 0.8 percent.

TABLE 3.—OILY WASTE EP LEACHATE ANALYSIS

Constituents	Maximum mobile metal concentration (ppm)
Cd	<0.01
CN	(1)
Cr (total)	0.25
Ni	0.70
As	<0.007
Ba	0.8
Pb	0.014
Hg	<0.002
Se	<0.007
Ag	<0.01

[1] An analysis for cyanide was not performed since the total concentration of cyanide was sufficiently low, and it was, therefore, unnecessary.

In addition to these analytical tests, Maytag submitted a signed statement which indicated that their wastewater treatment sludge does not meet any of the hazardous waste characteristics. Maytag also submitted a mass-balance demonstration for hydrazine to show its absence from the sludge. Maytag estimates that their maximum annual waste generation rate is 3,600 tons.

B. Agency Analysis and Action

Maytag has sufficiently demonstrated that the filter cake generated at their Newton, Iowa facility is non-hazardous. The Agency considers the sampling procedure used by Maytag to be adequate. By collecting five subsamples, at two-hour intervals, and compositing them into one sample each sampling day, Maytag ensured that each sample was representative of the sludge generated that day. Also, the duration of the sampling period was long enough to detect any variation in sludge composition from their three sludge settling tanks. In addition, there are no seasonal changes in the manufacturing process or raw materials, and Maytag does no piece-work. The Agency, therefore, concludes that the wastes samples analyzed by Maytag are representatives of their wastewater treatment sludge.

The Agency has elevated the mobility of the constituents of Maytag's wastewater treatment sludge, using the vertical and horizontal spread (VHS) model.[15] The Agency's evaluation of Maytag's 3,600 tons of sludge using the maximum extract levels from both the Oily Waste EP and EP Toxicity tests for listed constituents of concern and the non-listed EP toxic metals, generated the compliance point concentrations presented in Table 4.

TABLE 4.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS

Constituents	VHS model: calculated compliance point concentrations (ppm)	Regulatory standards (ppm)
Cd	0.001	0.01
Cr (total)	0.040	0.05
Ni	0.104	0.350
CN (total)	0.001	0.20
As	0.001	0.05
Ba	0.848	1.0
Pb	0.003	0.05
Hg	<0.0002	0.002
Se	0.001	0.01
Ag	0.001	0.05

The VHS model predicts that the compliance point concentrations of arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver were all below the National Interim Primary Drinking Water Standards, and nickel levels [16] were below the Agency's interim level of concern. Compliance point concentrations of cyanide also did not exceed the U.S. Public Health Service's suggested drinking water standard.[17] In addition, the total constituent concentration of cyanide (and reactive cyanide) is below the Agency's interim level of 250 ppm.[18]

the organic consitutents used in the manufacturing process (listed in Table 1) were evaluated by first estimating the leachate concentration (using the

[15] See footnote 4.
[16] See footnote 10.
[17] See footnote 5.
[18] See footnote 11.

proposed Organic Leachate Model) and then calculating the compliance point concentrations with the VHS model.[19] This procedure resulted in the compliance point concentrations presented in Table 5. Table 5 also presents the regulatory standard to which the calculated compliance point concentration is compared.

As indicated in Table 5, the calculated compliance point concentrations (using both the best-fit equation and the 95 percent confidence equation) for 15 of the 30 constituents, are below their respective regulatory standards. The five constituents, butyl benzyl phthalate, diethyl phthalate, dimethyl phthalate, naphthalene, and hydrazine were not analyzed using the OLM/VHS model, since the total constituent concentration of each constituent was significantly lower than its respective regulatory standard.

TABLE 5.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS [5] (PPM)

Constituents	Baseline concentration	95 percent confidence concentration	Regulatory standard [1]
Toluene	1.0×10^{-4}	2.0×10^{-4}	10.5
1,1,1-Trichloroethane	9.0×10^{-5}	1.6×10^{-4}	1.2
Tetrachloroethylene	1.4×10^{-4}	2.0×10^{-4}	6.9×10^{-4}
Dichloromethane	6.0×10^{-4}	4.7×10^{-3}	0.056
Chloroform	1.7×10^{-4}	2.9×10^{-4}	5×10^{-4}
Methyl ethyl ketone	1.4×10^{-3}	2.5×10^{-3}	1.8
Methyl isobutyl ketone	([3])	([3])	2.0
Di-n-butyl phthalate	3.0×10^{-3}	3.7×10^{-3}	3.5
Bis (2-ethyl hexyl) phthalate	8.0×10^{-4}	1.0×10^{-3}	0.7
Butyl benzyl phthalate	([4])	([4])	8.75
2-Chlorophenol	1.1×10^{-2}	1.5×10^{-2}	5×10^{-5}
2,4-Dichlorophenol	2.0×10^{-2}	3.1×10^{-2}	0.11
Diethyl phthalate	([4])	([4])	350
Dimethyl phthalate	([4])	([4])	350
Phenol	5.0×10^{-2}	8.0×10^{-2}	3.5
2,4,6-Trichlorophenol	2.8×10^{-3}	3.7×10^{-3}	1.8×10^{-3}
Chlorobenzene	2.0×10^{-5}	4.4×10^{-5}	1.1
Naphthalene	([4])	([4])	9
Fluoranthene	7.0×10^{-4}	9.0×10^{-4}	0.2
Benzo (b) fluoranthene	4.8×10^{-5}	7.2×10^{-5}	2×10^{-5}
Benzo (k) fluoranthene	3.1×10^{-5}	4.9×10^{-5}	4.0×10^{-3}
Chrysene	4.0×10^{-5}	7.6×10^{-5}	2.0×10^{-4}
Benzo(a)anthracene	3.4×10^{-5}	5.5×10^{-5}	1.0×10^{-5}
Dibenzo(a,h)anthracene	1.4×10^{-5}	2.16×10^{-5}	7.0×10^{-7}
Benzo(a)pyrene	1.9×10^{-5}	3.2×10^{-4}	3.0×10^{-6}
Di-n-octyl phthalate	2.0×10^{-3}	2.8×10^{-3}	0.6
Hydrazine	([4])	([4])	8.0×10^{-6}
Formaldehyde	3.8×10^{-2}	5.0×10^{-2}	7.0×10^{-5}
Formic Acid	([3])	([3])	70
Isobutyl alcohol	([3])	([3])	NA [2]

[1] An explanation of the derivation of these regulatory standards is available in the public docket.
[2] A regulatory standard is not currently available.
[3] Not calculated since a total constituent analysis was not performed.
[4] Not calculated since a solubility value was not available, however, the total constituent concentration is less than the regulatory standard (*i.e.*, assuming 100 percent leaching, the concentration of the constituent is still below the regulatory standard).
[5] The proposed OLM presented two possible equations, the baseline and a 95 percent confidence interval applied to the baseline equation. Both are presented here. Only one version will apply once the OLM is made final.

The three constituents, methyl isobutyl ketone, isobutyl alcohol, and formic acid were not evaluated with the OLM/VHS model since a total constituent analysis was not performed. The Agency agrees with the petitioner, that methyl isobutyl ketone and isobutyl alcohol are not present in the waste at concentrations of regulatory concern since the waste is not ignitable. The Agency determined that a formic acid concentration of 38,000 ppm would be necessary to fail the OLM/VHS model analysis. The Agency has reviewed Maytag's mass-balance demonstration and agrees that the concentration of formic acid present in the sludge is significantly less than 3.8 percent.

Seven of the 30 constituents, 2-chlorophenol, 2,4,6-trichlorophenol, benzo(b)fluoranthene, benzo(a)anthracene, dibenzo(a,h)anthracene, benzo(a)pyrene, and formaldehyde fail the VHS/OLM model analysis using the constituent's detection limit concentration and both the best-fit and 95 percent confidence equations. The Agency believes, however, that in Maytag's case it is not possible to achieve a low enough detection limit to pass the VHS model analysis for these constituents. Where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods the Agency will, as a matter of policy, not regulate the waste as hazardous. The Agency believes that formaldehyde, 2-chlorophenol, 2,4,6-trichlorophenol, benzo(b)fluoranthene, dibenzo(a,h)anthracene, benzo(a)pyrene, and benzo(a)anthracene are not present at levels of regulatory concern. The Agency has arrived at this conclusion since the recommended extraction and analytical procedures from Test Methods for Evaluating Solid Waste (SW-846) cannot achieve low enough detection limits to pass the OLM/VHS analysis for these seven constituents. The Agency further notes that it is not indicating that a detection limit of 1 ppm for formaldehyde and 0.66 ppm for the other six constituents are appropriate limits for all petitioners. The acceptability of a particular detection limit is decided on a case-by-case and will depend on the waste matrix. Additionally, as the recommended clean-up procedures and analytical tests improve, the required detection limits will decrease for those petitioners submitting petitions at that time.

The Agency has also concluded that there are no other hazardous organic constituents present in the waste, based on an examination of Maytag's raw materials, knowledge of the process, and the analytical test results provided by Maytag. The Agency also reviewed each of the chemical components in each raw material, as supplied by Maytag's raw materials list and material safety data sheets and has concluded from this review, that no other Appendix VIII hazardous constituents are present in the petitioned waste and that the formation of Appendix VIII hazardous constituents in the waste is unlikely.

The Agency, therefore, concludes that Maytag's waste, generated at their Newton, Iowa facility, does not present a significant hazard to either human health or the environment. The Agency believes that the waste should continue to be considered non-hazardous. The Agency, therefore, proposes to grant Maytag's application for final exclusion for its wastewater treatment sludges, listed as EPA Hazardous Waste No. F006. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process).[20] As a generator of a solid waste, Maytag is still obligated to periodically determine whether the wastes exhibit any of the hazardous waste characteristics.

IV. Windsor Plastics, Inc.

A. Petition for Exclusion

Windsor Plastics, Inc. (Windsor), located in Evansville, Indiana, is involved in the production of injection molded plastic parts. Windsor has petitioned the Agency to exclude its still bottom wastes presently listed as EPA Hazardous Waste No. F003—Spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanal; all spent solvent mixtures/blends containing before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing before use one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of those spent solvents and spent solvent mixtures. Ignitability is the basis for which the waste is listed as hazardous.

Based upon the Agency's review of the petition, Windsor was granted a temporary exclusion on November 22, 1982 (see 47 FR 225). The Agency's basis for granting the temporary exclusion, at that time, was Windsor's demonstration that its acetone recovery process combined with a steam-stripping treatment produced a non-ignitable waste. Since that time, the Hazardous

[19] For a discussion of the Agency's proposed Organic Leachate Model (OLM), see 50 FR 48957, November 27, 1985. See 51 FR 27061, July 29, 1986, Notice of Data Availability for the revised OLM.

[20] See footnote 6.

and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Windsor's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is on-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Windsor's petition.

In support of their petition, Windsor has submitted a detailed description of its solvent handling and treatment processes, including schematic diagrams, and ignitability test results of the still bottoms from solvent recovery. Windsor also submitted analytical results for leachable and total cyanide and total sulfide; EP toxicity test results for arsenic, barium, cadmium, chromium, lead, mercury, nickel, selenium, and silver; and results of total oil and grease analyses on representative waste samples. Windsor further submitted a list of raw materials used in the manufacturing process and total constituent test results for the priority pollutants. As noted above, the Agency requested much of this information to determine whether factors other than those for which the waste was originally listed, are present and could cause the waste to be hazardous.

Windsor's manufacturing process includes the injection molding of thermoplastics, the primary materials being acrylonitrile-butadiene-styrene (ABS), styrene, polycarbonate, polymethacrylate, and polyphenylene oxide. These molded parts subsequently are finished via silk screening, spray painting, hot stamping, vacuum metallization, and electroplating. During the spray paint process, permanent masks formed from different metals are used to block off specific areas of the plastic parts during the painting process. These permanent masks then must be cleaned between uses to prevent paint buildup. The masks are washed in an acetone spray washer, and the acetone from these washers becomes spent solvent.

The spent acetone solvent is distilled from the paint residues in an on-site distillation system for reclamation and reuse. Following distillation, the waste is treated with steam at a pressure of 10 p.s.i. for 24 hours to remove any remaining volatile solvents. Any condensed steam remaining in the drums of still bottoms is decanted off. The remaining dry cake (*i.e.*, steam-stripped still bottoms) is the subject of this delisting petition.

Windsor claims that its treated still bottoms are non-hazardous because the treatment process renders the waste non-ignitable. Windsor further claims that the distillation process recovers 95 percent of the spent acetone. Windsor also believes that the waste is not hazardous for any other reason.

Windsor, in support of their original delisting petition, submitted the results of EP analyses on 17 separate samples, collected over the course of two years. Ignitability, corrosivity, and oil and grease analyses were also submitted. In response to the Agency's November 26, 1984 request for additional information, Windsor undertook an additional sampling and analysis program. EP analyses were run on 6 composite samples for the EP metals. Ignitability, total cyanide and sulfide, and total oil and grease test results were also submitted. Windsor also submitted a detailed diagram with schematics of their process and material safety data sheets (MSDS) on all of the paints which are used in their process. After review of the data, the Agency questioned whether Windsor's sampling plan involving the collection of "random" samples was truly representative. Based upon the review of MSDS, the Agency also requested analysis for methylene chloride, toluene, methyl ethyl ketone, 1,1,1-trichloroethane, and benzene.

In response to the Agency's request, Windsor decided to re-sample their waste in order to address the Agency's concerns. Samples were collected in February of 1986. Windsor divided twenty 55-gallon drums, collected over the course of two weeks of operation into four composite groups, each composed of five drums. Each drum was opened and multiple grab samples were collected from each drum. The multiple grab samples from each five-drum set were combined to form one composite sample. The following analyses were performed on the four samples: ignitability, corrosivity (pH), oil and grease, EP toxicity tests for the EP metals and nickel, gas chromatographic/mass spectral (GC/MS) analyses for all the listed RCRA solvents, and total reactive cyanide and sulfide.

Results of the EP toxicity analysis of the steam-stripped still bottoms (the samples which were collected during February 1986), [21] for the EP metals and nickel revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	EP leachate analyses
Arsenic	<0.01
Barium	1.3
Cadmium	0.05
Chromium	0.14
Lead	0.5
Mercury	<0.005
Nickel	2.3
Selenium	<0.01
Silver	<0.01

The maximum reported oil and grease content was 0.42 percent. Windsor also provided test results which indicated that the steam-stripped still bottoms are not corrosive, reactive, or ignitable. The maximum concentration of total sulfide was reported to be <1 ppm; the maximum concentration of total cyanide was reported as <0.1 ppm. Windsor also provided GC/MS test results on several organic constituents that might be present in the waste. The total constituent concentrations for these compounds are presented in Table 2. Testing for ethyl acetate, ethyl ether, methyl ketone, n-butyl alcohol, cyclohexanone, and methanol (the other listed constituents of F003 wastes) was not required since the Agency's evaluation indicated that these constituents are not used by Windsor and are, therefore, not expected to be present in the waste.

TABLE 2.—TOTAL CONSTITUENT ANALYSES FOR ORGANICS

Constituents [1]	Total constituent analyses (ppm)
Acetone	<6.7
Benzene	<5.2
Ethyl benzene	88
Methylene chloride	320
Methyl ethyl ketone	<6.7
Toluene	<6.7
1,1,1-Trichloroethane	100
Trichloroethene	34
Xylene	270

[1] Acetone, ethyl benzene, and xylene are spent non-halogenated solvents (F003) listed solely for ignitability. They are not on Appendix VIII; therefore, they will only be evaluated in terms of their ignitability.

Windsor claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. Windsor further claims that the facility could be considered a job shop; the manufacturing processes used at the facility are uniform, but the use of raw materials, including different paint

[21] Results of the previous EP analyses were not included because the sampling protocol was not included and it was unclear as to wether the samples taken were representative. Furthermore, no quality assurance/quality control (QA/QC) data were provided on the earlier samples.

finishes, may vary over time. Windsor claims, however, that the sampling period was long enough to cover any scheduled changes in the product. Windsor claims to generate a maximum of 83 tons of steam-stripped still bottoms per year.

B. Agency Analysis and Action

Windsor has demonstrated that its treatment system produces a non-hazardous waste. The Agency believes that the four composite samples collected from the disposal drums over the two week period were non-biased and accurately represented any variations that may occur in the waste petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonally. The Agency is concerned that the two week sampling period used by Windsor to collect the organics data may not be long enough to cover any scheduled changes in the product line. The Agency is also concerned about the potential variability of the waste because Windsor operates as a job shop. In order to address these concerns, the Agency has reviewed Windsor's raw materials lists, and material safety data sheets for each component in the raw materials lists. The Agency concluded from this review that no other Appendix VIII constituents, other than those tested for and previously identified, are present in the waste. The Agency also believes that the potential variability of the organic constituents in the waste is low. The solvents are combined in the distillation process, and the still bottoms are expected to be relatively homogeneous after steam-stripping. Also, the wastes collected during the February 1986 sampling represented the total waste volume generated by Windsor over the preceding two weeks of plant operation, so no still bottoms produced by Windsor during that time were excluded from the evaluation. In order to more fully address the Agency's concerns over long-term variability, Windsor will collect additional waste samples to verify that organic constituent concentrations do not vary significantly over time, and will, therefore, not be of regulatory concern.

The Agency has evaluated the mobility of the EP toxic metals, nickel, and cyanide from Windsor's waste using the vertical and horizontal spread (VHS) model.[22] The VHS model generated compliance-point values using the annual generation rate of 83 tons per year and the maximum reported extract levels as input parameters. These compliance-point concentrations are exhibited in Table 3.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/STEAM STRIPPED STILL BOTTOMS (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0003	0.005
Barium	0.04	1.0
Cadmium	0.002	0.01
Chromium	0.004	0.05
Lead	0.02	0.05
Mercury	0.0002	0.002
Nickel	0.07	0.35
Selenium	0.0003	0.01
Silver	0.0003	0.05

The steam-stripped still bottoms exhibited EP metal concentrations (at the compliance point) below their respective National Interim Primary Drinking Water Standards; cyanide levels below the U.S. Public Health Service's drinking water standard;[23] and nickel levels below the Agency's Interim Health Advisory.[24] The waste's maxium sulfide and cyanide levels (<1.0 and <0.1 ppm, respectively) also are low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[25] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reality characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency evaluated the mobility of those organics that may be present in the steam-stripped still bottoms using the VHS model. The VHS model generated compliance-point values using the maximum reported waste generation rate and the maximum reported concentration of organics predicted by the Agency's organic leachate model.[26] The predicted leachate concentrations, compliance-point concentrations, and regulatory standards are shown in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM)

Constituents	Best-fit model		95% Confidence		Regulatory standards
	Predicted leachate	Compliance point	Predicted leachate	Compliance point	
Benzene	<0.11	3.3×10^{-3}	<0.13	4.0×10^{-3}	1×10^{-3}
Methylene chloride	4.2	1.3×10^{-1}	5.8	1.8×10^{-1}	0.06
Methyl ethyl ketone	<0.81	2.5×10^{-2}	<1.2	3.7×10^{-2}	2.0
Toluene	0.08	2.5×10^{-3}	0.10	3.1×10^{-3}	10.5
1,1,1-Tri-chloroethane	0.73	2.3×10^{-2}	0.92	2.8×10^{-2}	1.0
Trichloroethene	0.31	9.7×10^{-3}	1.6	5.0×10^{-2}	3×10^{-3}

Acetone, the listed solvent of concern (for ignitability) was not detected in any of the samples at a detection limit of 5 ppm. The steam-stripped still bottoms from recovery of acetone exhibited methyl ethyl ketone, toluene, and 1,1,1-trichloroethane concentrations below their regulatory standards. Methylene chloride, benzene, and trichloroethene, however, produced compliance-point concentrations above their respective regulatory standards.

For the following reasons, the Agency does not believe that the concentrations of these three constituents in the waste are of regulatory concern. Methylene chloride is a common laboratory contaminant. Windsor's four samples were first analyzed by the method of direct injection, as a screening procedure, with a detection limit of 50 ppm. Methylene chloride was not detected in any sample at the 50 ppm detection limit. All the samples were re-analyzed using the extraction and purge and trap method, with a lower detection limit of 5.0 to 6.7 ppm. This method involved diluting the sample 5,000 to 1; the direct analytical instrument readings must be multiplied by 5,000 to reach the original constituent concentrations. Methylene chloride was reported by the extraction and purge and trap method up to 320 ppm. These concentrations of methylene chloride should have been, but were not, detected by the direct injection procedure. The Agency, therefore, believes that the methylene chloride was a laboratory contaminant, as the contaminant appeared in the extracted waste but not in the still bottom. The application of the correction factor of 5,000 served to magnify the error and so was inappropriated.

Benzene was not detected in the waste above its detection limit of <5.2 ppm, however, using the detection limit value as the input in the OLM/VHS

[22] See footnote 4.

[23] See footnote 5.

[24] See footnote 10.

[25] See footnote 11.

[26] See footnote 19.

evaluation, the compliance-point value for this compound exceeds its regulatory standard. Benzene is assumed by the Agency not to be present in Windsor's waste at levels of regulatory concern. This assumption is made since the recommended extraction and analytical procedures described in SW-846, Test Methods for Evaluating Solid Waste, cannot achieve detection limits low enough to pass the VHS analysis for some constituents. The Agency is not indicating that a 5 ppm detection limit for benzene is an appropriate minimum limit for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix. Detection limits required for a liquid waste may be orders of magnitude lower due to the technical ability to reach lower detection limits on "clean" liquid wastes. The Agency further notes that, as the recommended clean-up and analytical tests improve, the required detection limits will decrease for those petitioners submitting petitions at that point in time.

Trichloroethene was detected in a single sample out of four, but the Agency's examination of the raw materials used by Windsor did not indicate that this compound is used by Windsor. The Agency does not believe that these constituents are of regulatory concern for the following reasons. Trichloroethene and benzene would not be expected to be present in significant concentrations on the metal masks, even if they were present as paint solvents. After the masks are cleaned with the acetone solvent, the concentrations of these would be minimal due to futher dilution. After distillation, the still bottom residues are steam-stripped. Due to their physical and chemical properties, trichloroethene and benzene can be effectively steam-stripped and thus removed from the waste, while acetone cannot.[27] Acetone was not detected in the waste.

For these reasons, the Agency does not believe that it is reasonable for trichloroethene and benzene to be present in the waste at concentrations greater than acetone. It is reasonable to assume that, if these constituents were present in the waste, they would be expected to be present at significantly lower levels then the detection limits.

In order to verify the Agency's preliminary determination of the low concentrations of trichloroethene, benzene, and methylene chloride in the waste, the Agency has decided that Windsor must collect additional samples of waste and test these samples for the three organics mentioned above. The Agency will evaluate this data to verify whether these constituents are consistently below levels of regulatory concern in the waste. If Windsor fails to submit this information, or if the new data does not confirm the Agency's preliminary conclusion that these constituents are not of regulatory concern, the Agency will make a new proposal to either condition an exclusion upon continued waste testing, or to deny the petition.[28]

The Agency believes that the treatment process used by Windsor generates a non-hazardous waste. Subject to the conditions stated above, therefore, the Agency proposes to grant an exclusion to Windsor Plastics, Inc., located in Evansville, Indiana, for its steam-stripped still bottoms as described in the petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process).[29] As a generator of solid waste, Windsor is still obligated to periodically determine whether the wastes exhibit any of the hazardous waste characteristics.

V. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendents of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated commuinty does not need the six-month period to come into compliance. That is the case for the four petitioners being granted exclusions since the rule reduces rather than increases the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of Section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the four exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect of increasing overall waste disposal costs. For the four facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.
Dated: October 3, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912(a), 6921,and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

[27] See 51 FR 1719 (January 14, 1986).

[28] The Agency notes that Windsor has already been notified of the need for this additional test data. Windsor has already begun sampling and testing and intends to submit this data during the comment period.

[29] See footnote 6.

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
Capitol Products Corp.	Kentland, IN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date of final rule's publication].
Lincoln Plating Co.	Lincoln, NE	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of publication].
Maytag Co.	Newton, IA	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations and wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum [insert date of final rule's publication].
Windsor Plastics, Inc.	Evansville, IN.	Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste No. F003) generated from the recovery of acetone after [insert date of final publication].

[FR Doc. 86-22939 Filed 10-8-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

46 CFR Part 202

[OST Docket No. 44399; Notice No. 86-11]

Actions of the Maritime Subsidy Board; Procedures for Formal Review by the Secretary of Transportation

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the procedures for Secretarial review of decisions by the Maritime Subsidy Board (Board) of the Maritime Administration (MarAd). Formal procedures for review of Board decisions on the Secretary's own motion would be eliminated. Board decisions would be final as issued and subject to judicial review unless a petition for Secretarial review has been filed and granted. Parties that desire a formal Secretarial review of Board decisions would be required to submit a petition and supporting brief on the merits within fifteen days of service of the Board's actions.

DATE: Comments on the proposed rule must be received on or before November 10, 1986.

ADDRESS: Comments should be directed to the Docket Clerk (C-55), Docket 44399, Room 4107, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366-9305, or Michael Jennison, Office of the Assistant General Counsel for International Law (202) 366-5621, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTAL INFORMATION:

Background

The Maritime Subsidy Board is an establishment within the Maritime Administration originally created in 1961 by delegation of the Secretary of Commerce to exercise certain functions transferred by reorganization plan from the Chairman of the Federal Maritime Board to the Secretary of Commerce. Those functions, transferred to DOT pursuant to section 2 of the Maritime Act of 1981, 46 U.S.C. app. 1601, primarily consist of making, amending, and terminating subsidy contracts under the Construction-Differential Subsidy and Operating-Differential Subsidy programs and making certain related determinations. The current delegation of authority from the Secretary of Transportation can be found at 49 CFR 1.67. After extensive experience with the review of Board decisions, the Department is proposing amended procedures to revise the process of review on request of interested parties. The proposed regulations also make clear that there is no prohibition on internal communications between MarAd and the Office of the Secretary on matters pending before the Secretary. Internal communications on matters pending before the Board will also be discussed below.

Discussion—Procedural Changes

For a number of years, the inherent authority of the Secretary of Commerce to review decisions taken by the Board was exercised under formal procedures provided in part under Department of Commerce Order 177-A, 31 FR 8087, 15331 (1966), section 6 of which is reprinted in pertinent part with other procedural regulations at 46 CFR Part 202. When the Maritime Administration was transferred to the Department of Transportation these and other MarAd regulations were generally retained with minor editorial changes to reflect the transfer.

The Department has now determined that the current regulations, Part 202 of Title 46, CFR, imposed burdensome procedural requirements on parties requesting and opposing Secretarial review in nonhearing cases. In these cases, parties must move rapidly to obtain review. A request for review must currently be filed within ten days of the Board's *action* (often several days elapse before it is served or otherwise distributed). A counter-request that review now be undertaken is due within fifteen days of the action. Order 177-A, section 6.02, 47 CFR 202.1. Thus, because these request deadlines are based on the date on which the Board takes action rather than the date on which the action is made public, parties on either side of a case can lose some of their preparation time before they learn of a Board decision. Moreover, there is a different set of deadlines for petitions for review of hearing cases.

To remedy these problems (and to conform the review schedule for hearing and nonhearing cases), the proposed regulations provide for parties to hearing cases (and persons affected by a decision in a nonhearing proceeding) to file a petition for review and supporting brief, and to serve any other parties of record, within fifteen days of the service of a Board action. Responding briefs must be filed within ten days of the filing of petitioner's petition. The Secretary would normally decide whether to review an action within ten days after the filing of the responding briefs, although she may extend or shorten the time in which to consider a particular case. A Board action would become final thirty-five days after the date of its service, unless: (1) There has been no petition for review (in which case the action is final after fifteen days), (2) the Secretary has extended the time to consider an action or has decided to review an action, or (3) the Secretary has expressly declined to grant review before the thirty-five days have elapsed (in which case the action is final on the date specified by the Secretary).

In order to streamline the review process further, it is contemplated that the Secretary's functions under Part 202 will be delegated to the General Counsel, except for the final decision issued pursuant to § 202.7 of the proposed rules. That delegation will be published separately in the **Federal Register** with the Department's final action on this rulemaking.

Secretarial Involvement in Departmental Decisionmaking

In section 2(b)(1) of the Department of Transportation Act, 49 U.S.C. 1651(b)(1), the Congress found "that the establishment of a Department of Transportation is necessary in the public interest and to ensure the

coordinated, effective administration of the transportation programs of the Federal Government . . . . " From the time the office was created, the Secretary of transportation has been actively involved in decisions otherwise delegated to the administrators of the agencies within the Department. Indeed, the Departmental delegations begin (at 49 CFR 1.42) with a general caveat that delegates may not exercise their delegated functions to the exclusion of Secretarial involvement. Such involvement—intended principally to ensure that decisions are consistent with departmental and national transportation and economic policy—usually takes place informally. When a matter will have significant policy consequences or substantial budgetary impact, the responsible decisionmaker will ensure Secretarial involvement before the decision is reached. With the exception of special areas, such as the Contract Appeals Board, the Department of Transportation does not normally extend formal quasi-judicial procedures to the review of decisions of subordinate officers.

The Department believes it important to clarify to the public its longstanding interpretation that neither existing nor proposed § 202.11 (governing ex parte communications during Secretarial review) nor § 201.183 of Title 46, CFR (governing ex parte communications when certain matters are before the Board or the Maritime Administrator) applies to communications between MarAd and the Office of the Secretary. The Department rejects any interpretation of those sections that would bar such communication as inconsistent with both its practice and statutory mandate. An amendment clarifying § 201.183, the MarAd ex parte communications regulation, will be published in the **Federal Register** with the Department's final action on this rulemaking. These regulations would make clear (together with the clarifying amendment to § 201.183) that MarAd and the Office of the Secretary of Transportation may consult with each other on all matters they deem appropriate and that such communication is not a prohibited ex parte contact. This internal coordination process makes it unnecessary to have formal procedures for review of Board actions on the Secretary's own motion. The Secretary retains, of course, authority to substitute her decision for the Board's action, in effect revoking her delegation of authority. *See, e.g.,* 49 CFR 1.42 and 1.43(a). The proposed regulations are not intended to divest the Secretary of that authority.

The Department recognizes that parties may seek to present their arguments directly to the Secretary in important cases. These proposed regulations therefore retain a formal review process for that purpose. Parties are reminded that the Secretary as an appellate decisionmaker is not insulated from contact with MarAd before or after a Board decision. Further, the decision to grant Secretarial review of a Board action would remain a discretionary matter.

Executive Order No. 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

These proposed regulations are not significant within the definition in the Department's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because they do not involve any change in important Department policies. Their economic impact should be minimal, and further regulatory evaluation is not required. Moreover, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

These proposed regulations do not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Finally, the proposed action contains no collection of information requirements. Accordingly, review by the Office of Information and Regulatory Affairs of the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 is not required.

Comments Invited

The public is invited to comment on this proposed rule by filing written comment to the docket. The rule may be changed in the light of comments received. Comments should be submitted in duplicate and should identify the regulatory docket number. All comments submitted will be available in the rules docket for examination by the public, both before and after the closing date for comments, on weekdays, except federal holidays, between 9:00 a.m. and 5:00 p.m. A report summarizing each substantive public contact with DOT personnel concerned with the rulemaking will be filed in the docket. Commenters who want receipt of their comments acknowledged must submit with those comments a selfaddressed, stamped postcard marked: "Comments on Docket No. 44399." The postcard will be dated, time stamped, and returned.

Availability of Proposed Rule

Any person may obtain a copy of this proposed rule by submitting a request to the Docket Clerk (C–55), Room 4107, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, identified under "ADDRESS" above, or by calling (202) 366–9323. Communications should identify the docket number.

List of Subjects in 46 CFR Part 202

Administrative practice and procedure.

Accordingly, it is proposed that Part 202 of Title 46, Code of Federal Regulations, be revised to read as follows:

Subchapter A—Policy, Practice and Procedure

* * * * *

PART 202—PROCEDURES FOR FORMAL REVIEW BY THE SECRETARY OF ACTIONS OF THE MARITIME SUBSIDY BOARD

Sec.
202.1 Applicability of rules.
202.2 Definitions.
202.3 Petitions for review by the Secretary.
202.4 Contents of briefs.
202.5 Form and service of documents filed with the Secretary; service; filing; number of copies.
202.6 Decision to review.
202.7 Decision of the Secretary.
202.8 Effective dates of Board actions.
202.9 Computation of time.
202.10 Waiver or modification of review provisions.
202.11 Ex parte communications.
202.12 Public availability of documents.

Authority: 46 U.S.C. app. § 1114; 46 U.S.C. app. 1601–1602; 49 U.S.C. 1657(e); Reorganization Plan No. 7 of 1961, section 201, 26 FR 2315 (1961); and Reorganization Plan No. 21 of 1950, section 204, 15 FR 3178 (1950).

§ 202.1 Applicability of rules.

This part prescribed procedures for formal review by the Secretary of Transportation of any final action of the Maritime Subsidy Board, pursuant to the reservation of authority at 49 CFR 1.44(q).

§ 202.2 Definitions.

As used in this part:

(a) "Action" means any decision, report, order, or other public action of the Board.

(b) "Board" means the Maritime Subsidy Board established under 49 CFR 1.67.

(c) "Department of Transportation" or "Department" means all establishments and employees of the United States Department of Transportation, including the Office of the Secretary of Transportation and the Maritime Administration.

(d) "Secretary" means the Secretary of Transportation or his or her delegate under 49 CFR 1.57.

§ 202.3 Petitions for review by the Secretary.

(a) A party to a proceeding before the Board subject to hearing under the rules in Part 201 of this Title, or a person affected by a proceeding not subject to hearing, may petition the Secretary to review an action of the Board taken in that proceeding.

(b) A petition for review by the Secretary and supporting brief must be filed with the Secretary and served on all parties of record in the proceeding before the Board within fifteen (15) days from the date of service of the action of the Board. Responses and supporting briefs shall be filed and served within ten (10) days after the filing of the petition for review.

§ 202.4 Contents of briefs.

(a) *Contents of petitioner's brief.* Petitioner's brief shall contain under appropriate headings and in the order here indicated:

(1) A table of contents and a table of authorities relied upon, with page references.

(2) The issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition by the Board below. There shall follow a clear statement of the facts relevant to the issues presented for review.

(4) Argument. The argument shall contain petitioner's contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities and portions of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) *Contents of briefs of other parties.* Briefs of other parties shall conform to the requirements of subparagraphs (a)(1)–(4) of this section, except that a statement of the issues or of the case need not be made unless a responding party is dissatisfied with petitioner's statement.

(c) *Supplemental briefs.* After granting a petition, the Secretary may request further briefs in cases where they are deemed appropriate and desirable.

(d) *Length of briefs.* Except by permission of the Secretary, the statement of the case and the argument together shall not exceed forty (40) double-spaced, 8½ by 11 inch pages.

§ 202.5 Form and service of documents filed with the Secretary; service; filing; number of copies.

(a) *Form and service of documents.* All documents filed with the Secretary, other than records, shall bear on the first page the name of the action and its Board docket number (if any), the name of the party or parties, the title of the document, and the name, address, and telephone number of the attorney or authorized representative (if any) for the party concerned and be accompanied by a certificate of service. One copy of each document shall be signed by the party filing it or its attorney. A party not represented by an attorney shall state its address and telephone number. Unless otherwise ordered by the Secreatary, service shall be made on all parties of record before the Board and any other party that has filed a petition or response with the Secretary. The signature of an attorney constitutes a certificate that the signer has read the document; that to the best of the signer's knowledge, information, or belief there is good ground to support it; and that it is not interposed for delay.

(b) *Service.* As required by this part, service shall be by delivery of a copy of the document to be served or by mail to a party, first class mail, at the last known address or, if no address is known, by leaving it with the Secretary in accordance with paragraph (c) of this section.

(c) *Filing.* As required by this part, filing with the Secretary shall be accomplished by filing with the Assistant General Counsel for Environmental, Civil Rights, and General Law (C–10), Room 10102, Office of the General Counsel, and the Secretary of the Board (MAR–120). Room 7300, 400 Seventh Street, SW., Washington, DC, 20590. Documents delivered elsewhere in the Department will be considered filed only when they are actually received at the Office of General Counsel.

(d) *Number of copies.* Unless otherwise specified by these rules or by order of the Secretary, one (1) original and ten (10) copies of the document shall be filed.

§ 202.6 Decision to review.

(a) The decision to review an action of the Board is at the discretion of the Secretary.

(b) Petitions for review will not be granted unless significant questions of policy requiring the Secretary's attention are involved or there appears to be significant legal or factual error in the Board's action.

(c) *Order stating decision to review; service of order.* After reaching a decision to grant review, the Secretary will enter an order so stating, serve a copy on all parties, and file a copy with the Board.

(d) *Orders necessary or appropriate.* The Secretary may extend the effective date of a Board action or shorten the review period established by this part, and may issue any orders necessary or appropriate to disposition of the issues.

(e) *Oral argument.* Generally, oral argument will not be necessary. The Secretary reserves the right to require it, however, when deemed desirable.

(f) *Certification of record.* Promptly upon the filing of a petition and brief for review, the Board shall certify to the Secretary the complete record of the proceeding leading to the action of the Board that is the subject of the petition. A copy of the certified record will be available for public inspection at the Board.

§ 202.7 Decision of the Secretary.

Upon the determination of a case taken under review by the Secretary, a written opinion and order stating the Secretary's conclusions and an explanation of them will be issued.

§ 202.8 Effective dates of Board actions.

(a) *If no petition for review is filed.* A Board action becomes effective fifteen (15) days from the date of its service, unless (i) a timely petition for review is filed or (ii) otherwise provided by the Secretary.

(b) *If petition for review is filed.* If the Secretary does not grant review (either expressly or by allowing the time for review to expire) of an action with respect to which a timely petition for review has been filed, it becomes effective thirty-five (35) days from the date of its service, unless otherwise provided by the Secretary.

§ 202.9 Computation of time.

In computing any period of time under these rules, the time begins with the day following the event and includes the last day of the period, unless it is a Saturday, Sunday, or federal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or federal holiday.

§ 202.10 Waiver of modification of review provisions.

The Secretary may, for good cause or in order to prevent undue hardship in any particular case, waive or modify any procedural provision of this part by written order.

§ 202.11 Ex parte communications.

(a) *Communications with the Department.* Oral or written communications relevant to the merits of a matter subject to Secretarial review under this part between any DOT employee who is involved in that matter and any interested person outside DOT, unless otherwise permitted by law, shall be deemed prohibited ex parte communications. Such determinations shall not be made part of the record and shall not be considered in making any recommendation, decision, or action. Written communications in violation of this paragraph shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours at the Board. Oral communications in violation of this paragraph shall be summarized by the DOT employee involved—one copy shall be put into the public file described above; another shall be mailed to the communicator. The provisions of this paragraph shall not apply to informal communications between legal counsel (including discussions of stipulations and other communications considered proper in federal court proceedings), settlement discussions and mediation efforts, status and procedural inquiries, and requests for expedition of proceedings.

(b) *Communications within the Department.* Notwithstanding any other rule or provision, the Secretary and staff and members of the Board and its staff, may, at their discretion, consult with one another on any issue concerning any matter subject to this part that they deem appropriate.

§ 202.12 Public availability of documents.

All documents filed with the Secretary are available for inspection and copying at the office of the Maritime Subsidy Board, Room 7300, Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on October 2, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-22789 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Amendment to Certification of Central Filing System

The Statewide central filing system of Idaho has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for farm products produced in that State (51 FR 34236, September 26, 1986).

The same system is hereby certified on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for additional farm proudcts produced in that State as follows:

Buckwheat
Garbanzos (chick peas)
Carrots
Turnips
Asparagus
Spinach and collards
Pumpkins and squash
Fox and pelts
Cattle semen
Horse semen

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: October 6, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Aministration.

[FR Doc. 86–22938 Filed 10–8–86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-401]

Bicycle Tires and Tubes From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on bicycle tires and tubes from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States covered by the order and the period June 1, 1983 through May 31, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24157) the antidumping duty order on bicycle tires and tubes from Taiwan. We began the current review of the order under our old regulations. After the promulgation of our new regulations, two manufacturers/exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on November 27, 1985 (50 FR 48825).

Scope of the Review

Imports covered by the review are shipments of pneumatic bicycle tires and tubes of rubber or plastic, whether sold together as units or separately, currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers Kenda Rubber Industrial Co., Ltd. and Li Hsin Rubber Industrial Co., Ltd., two manufacturers and/or exporters of Taiwanese bicycle tires and tubes to the United States covered by the order, and the period June 1, 1983 through May 31, 1985. Li Hsin did not provide an adequate response to our antidumping questionnaire. For this firm we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available was the rate published in the order.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed f.o.b. or c.i.f. price to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, a stamp tax paid upon export, and rebated import duties on imported raw materials used to produce subsequently exported merchandise. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market for comprison purposes. Home market price was based on the packed delivered price to unrelated purchasers in the home market with adjustments, where applicable, for inland freight, a stamp tax, commissions to unrelated parties, other selling expnses when a commission was paid in one market and not the other, differences in credit and packing costs, and differences in the physical characteristics of the merchandise. We disallowed a claim for home market advertising because the advertising was

not directly related to the sales made during the review period. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Kenda Rubber Industrial Co., Ltd.	June 1, 1983–May 31, 1985	0.02
Li Hsin Rubber Industrial Co., Ltd.	June 1, 1983–May 31, 1985	3.65

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held in 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margin for Kenda is less than .5 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for that firm. For any future shipments from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order (49 FR 24157, June 12, 1984) for each of those firms: For any future entries of this merchandise from a new exporter, not covered by this review, whose first shipments occurred after May 31, ,1985 and who is unrelated to any reviewed firm, the Department waives the cash deposit requirement. These deposit requirements and waiver are effective for all shipments of Taiwanese bicycle tires and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §353.53a of the Commerce Regulations (19 CFR 353.54a); 50 FR 32556, August 13, 1985.)

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administation

[FR Doc. 86–22900 Filed 10–8–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-013]

Certain Stainless Steel Sheet and Strip From the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain stainless steel sheet and strip from the Federal Republic of Germany. The review covers one of the three known manufacturers and/or exporters of this merchandise to the United States currently covered by the order and the period December 17, 1982 to May 31, 1983. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

On August 11, 1986, the Department published in the **Federal Register** (61 FR 28738) the revocation of the order, effective March 1, 1986. Therefore no cash deposits of estimated antidumping duties are required on this merchandise exported on or after March 1, 1986.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine Glover or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 1983, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order on certain stainless steel sheet and strip from the Federal Republic of Germany (48 FR 28680, June 23, 1983). The Department published the revocation of the order on August 11, 1986 (51 FR 28738), effective March 1, 1986. On November 27, 1985, we initiated the first administrative review of this order (50 FR 48826). Two of the three companies on which we initiated (Krupp Stahl and Thyssen) have withdrawn their requests for review. Thus, we conducted an analysis on Vereinigte Deutsche Metallwerke (VDM) only.

Scope of the Review

The certain stainless steel sheet and strip products covered by this review are hot- or cold-rolled stainless steel sheet or strip, excluding hot- or cold-rolled stainless steel strip not over .01 inches in thickness, as currently classifiable under item numbers 607.7610, 607.9010, 607.9020, 608.4300, and 608.6700 of the Tariff Schedules of the United States Annotated.

The review covers one of the three known manufacturers/exporters of German stainless steel sheet and strip and the period December 17, 1982 to May 31, 1983.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed c.i.f. price to unrelated purchasers in the United States. We deducted, where applicable, ocean freight, U.S. and foreign inland freight, marine insurance, brokerage/handling charges and U.S. customs duties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, to provide a basis of comparison for VDM since sufficient quantities of such or similar merchandise were sold in the home market during the period of review.

Home market price was passed on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, credit expenses, and differences in the physical characteristics of the merchandise. We disallowed technical and laboratory

service expenses, sales expenses, and warranty costs because they were not proven to be directly related to sales. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
VDM	Dec. 17, 1982–June 31, 1983	2.0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

On August 11, 1986, the Department published in the **Federal Register** (51 FR 28738) a notice of the revocation of the order, effective March 1, 1986. This administrative review covering the period December 17, 1982 to May 31, 1983, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise exported on or after March 1, 1986 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556 August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-22901 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-004]

Carbon Steel Wire Rod From South Africa; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: In response to a request from the petitioners, the Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from South Africa. The review covers the period January 1, 1983 through September 30, 1984 and eight programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984, and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984. We consider any rate less than 0.50 percent to be *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 32931) the final results of its last administrative review of the countervailing duty order on carbon steel wire rod from South Africa (47 FR 42396, September 27, 1982). On October 10, 1985, the petitioners, Continental Steel Company, Georgetown Steel Corporation, Raritan River Steel Company, North Star Steel Texas, Inc., and Atlantic Steel Company, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). On October 7, 1985, we revoked the order effective October 1, 1984 (50 FR 40886).

Scope of the Review

Imports covered by the review are shipments of South African wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through September 30, 1984 and eight programs: (1) Export Incentive Program—Categories A, B and D; (2) Government assumption of finance charges; (3) Government equity participation; (4) Loans from the General Levy and Import Subsidy Scheme; (5) Industrial Development Corporation loans; (6) Preferential rail rates; (7) Government loan guarantees; and (8) a homeland development/ regional decentralization program. During the period of review, the South African Iron and Steel Corporation ("ISCOR") was the only known exporter of South African wire rod to the United States.

Analysis of Programs

(1) Export Incentive Program: In 1980, the South African Department of Industries, Commerce and Tourism expanded and restructured its Export Incentive Program.

Category A is a tax credit equal to 50 percent of the value of import duties on raw materials that are re-exported after further processing. Category B is a tax credit equal to 10 percent of the value-added component of merchandise a company exports if there is a South African import duty on competing imported merchandise. There is an import duty on wire rod. ISCOR was not eligible to claim either of these tax credits during the period of review.

Category D consists of a deduction from taxable income of up to 200 percent of export market development expenses. ISCOR had no taxable income during the period of review. Therefore, we preliminarily determine that there was no benefit from this program during the period of review.

(2) Government Assumption of Financing Charges: In 1978, the Government of South Africa assumed 70 million rand of financing charges facing ISCOR. To calculate the subsidy attributable to this program, we followed the grant methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Determination and Order" on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984). We allocated the grant over 15 years, the average useful life of assets in

the steel industry, according to the U.S. Internal Revenue Service Class Life Asset Depreciation Range System. For a discount rate, we used ISCOR's 1978 weighted cost of capital. On this basis, we preliminarily determine the benefit for this program to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984 and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984.

(3) Government Equity Participation: The South African government made no new investments in ISCOR during the review period. Therefore, we preliminarily determine that there was no benefit from this program during the period of review.

(4) Other Programs: We also examined the following programs and preliminarily find that ISCOR did not use them during the period of review:

a. Loans from the General Levy and Import Subsidy Scheme;

b. Industrial Development Corporation loans;

c. Preferential rail rates;

d. Government loan guarantees; and

e. Home development/regional decentralization program.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984, and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service not to assess countervailing duties on any shipments of this merchandise exported on or after January 1, 1983 and exported on or before September 30, 1984.

Because the Department revoked this order effective October 1, 1984, we do not intend to instruct the Customs Service to collect cash deposits of estimated countervailing duties on this merchandise.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing with 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22902 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-565-001]

Canned Tuna From the Philippines; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on canned tuna from the Philippines. The review covers the period January 1, 1984 through December 31, 1984 and 19 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be 1.16 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50134) a countervailing duty order on canned tuna from the Philippines. On October 31, 1985, the Government of the Philippines, a group of importers, the Tuna Group of the Association of Food Industries, and a group of exporters, the Tuna Canners Association of the Philippines, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation of the administrative review on November 12, 1985 (50 FR 46689). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under items 112.3020, 112.3040 and 112.3400 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and 19 programs: (1) Exporting packing credits; (2) An income tax deduction for labor and raw materials; (3) Equity investment by insurance companies; (4) Foreign equity investment; (5) Preferential access to foreign exchange; (6) An exemption from import taxes; (7) An income tax deduction for overseas offices; (8) An income tax deduction for new brand names; (9) An income tax deduction for export traders; (10) An income tax deduction for financial assistance; (11) Government bank loans; (12) Private bank loans; (13) Employee equity investment; (14) A tax credit for net local content; (15) A tax credit for net local value; (16) Preferential loan guarantees; (17) Government equity investment; (18) Various financial services by the Export Credit Insurance and Guarantee Corporation; and (19) Various financial and marketing assistance by the Institute for Export Development.

Analysis of Programs

(1) Export Packing Credits

The Central Bank of the Philippines offers a rediscounting program through commercial banks. Upon receipt of a letter of credit from a foreign purchaser, an exporter may negotiate with a commercial bank an "export packing credit," which is a pre-export loan, based on the letter of credit. The commercial bank may then rediscount the packing credit with the central bank. On November 22, 1983, Circular 981 set the maximum interest rate at the 90-day Manila Reference Rate minus two points and the maximum loan amount at 80 percent of the value of the letter of credit. Effective March 9, 1984, Circular 994 raised the maximum loan amount to 90 percent of the value of the letter of credit. If the commercial banks do not rediscount the loans, they may charge a commercial rate of interest. We

preliminarily determine that these loans are countervailable to the extent that they are given at preferential rates.

For our benchmark interest rate, we took the weighted annual average interest rate for secured loans for one year or less, as reported by the central bank. To find the benefit for each loan, we took the difference between the actual interest paid and the interest the firm would have paid using our benchwork interest rate. We then weight-averaged each firm's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminary determine the total benefit under this program to be 1.11 percent *ad valorem.*

(2) Income Tax Deduction for Labor and Raw Materials (Article 48(b))

Article 48(b) of the Omnibus Investment Code ("the Code"), which provides a variety of investment incentives to registered enterprises, allows a Philippine-owned and registered exporter an income tax deduction for direct labor and local raw material costs for up to five years following registration. We preliminarily determine that this program is countervailable because it is available only to exporters. To calculate the benefit, we multiplied the amount of the deduction claimed in 1984 by the normal corporate tax rate and divided the result by the firm's total 1984 exports to all markets. We then weight-averaged the benefit by each firm's share of total exports of the merchandise to the United States. We preliminarily determine the benefit from this program to be 0.05 percent *ad valorem.*

(3) Equity Investments by Insurance Companies (Article 52)

Article 52 of the Code authorizes the Insurance Commissioner to allow insurance companies to invest in registered enterprises. The Philippine government does not provide funds or incentives to the insurance companies.

Insurance companies purchased equity in two of the exporting companies during the review period. Because the insurance companies acted without any direction, funds, or incentives from the Philippine government, we preliminarily determine that these equity purchases are not countervailable.

(4) Foreign Equity Investment

Presidential Decree 1892 suspended, for a one-year period beginning on December 4, 1983, the 60-percent Philippine ownership requirement for enterprises registered under Article 34(1) of the Code. Although this decree allows increased foreign equity in registered enterprises, the Philippine government does not provide funds or incentives to foreign investors.

On December 31, 1983 a foreign company purchased equity in one of the exporting companies. Because the foreign company acted without any government direction, funds, or incentives, we preliminarily determine that this foreign equity investment is not countervailable.

(5) Preferential Access to Foreign Exchange

Because of the financial crisis and severe foreign exchange shortage in 1983 and 1984, the Philippine government established an interim system that would allocate scarce foreign exchange to those sectors that would lead the country towards economic recovery. A domestic producer, Starkist, alleges that tuna exporters receive priority access to foreign exchange.

All companies must deposit their foreign exchange holdings in commercial banks. Under central bank Circular 970, commercial banks are required to sell to the central bank all foreign exchange receipts from exports of merchandise and services. Over the course of 1984, this requirement was modified to allow the banks to retain an increasing portion of their foreign exchange receipts to use as they wished. Circular 970 set the following priorities for distribution of foreign exchange: (1) Oil imports, (2) debt servicing, and (3) exporters in need of imported raw materials. On October 15, 1984, this program was terminated by Circular 1030.

Exporters need to prove that they need imported raw materials in order to qualify. For each industry, the central bank establishes an import coefficient that represents the maximum amount of foreign currency it will allow a firm in that industry. This coefficient is based on the historical proportion of imports to total production cost in that industry. The government allows exporters to repurchase an amount equal to the import coefficient for the industry. One firm used this program during the period of review.

Although the law states that exporters and certain priority industries have preferential access to foreign exchange, we found that foreign currency is also available to producers for the domestic market at a fixed rate of exchange. Since the exchange rate in the Philippines is fixed, producers for both the domestic and export markets purchase foreign exchange at the same rate. Domestic producers can purchase foreign exchange from commercial banks and may open import letters of credit using foreign exchange.

Furthermore, most of the foreign currency collected by the central bank is generated by exporters. Producers selling domestically do not earn foreign currency because they do not export. Since exporters earn most of the foreign currency that the government then redistributes, the exporters are in effect subsidizing the foreign exchange requirements of the rest of the economy. Rather than acting to the benefit of certain exporters, restricted access to foreign exchange acts to their detriment. In permitting certain exporters to retain or buy back a certain percentage of their foreign exchange earnings, the government is only allowing those exporters to have a portion of their own money.

For these reasons, we preliminarily determine that this program is not countervailable.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of canned tuna did not use them during the review period:

(A) An exemption from import taxes (Article 48(f) of the Code);

(B) An income tax deduction for overseas offices (Article 49(f) of the Code);

(C) An income tax deduction for new brand names (Article 48(e) & 49(g) of the Code);

(D) An income tax deduction for export traders (Article 49(d) of the Code);

(E) An income tax deduction for financial assistance (Article 49(e) of the Code);

(F) Government bank loans (Article 51 of the Code);

(G) Private bank loans (Article 52 of the Code);

(H) Employee equity investment (Article 53 of the Code);

(I) A tax credit for net local content;

(J) A tax credit for net local value;

(K) Preferential loan guarantees;

(L) Government equity investment;

(M) Various financial services by the Export Credit Insurance and Guarantee Corp.; and

(N) Various financial and marketing assistance by the Institute for Export Development.

Preliminary Results of Review

As a result of our review, we prelimiarily determine the total bounty or grant to be 1.16 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess

countervailing duties of 1.16 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 1.16 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22905 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1984 through December 31, 1984 and 15 programs.

As a result of the review, the Department has preliminarily determined the net subsidy for the period of review to be 2.66 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202-377-2786).

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 9921) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). We began this review of the order under our old regulations. On September 30, 1985, after the promulgation of our new regulations, the petitioner, the American Manufacturers of Castor Oil Products, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and 15 programs: (1) CACEX export financing; (2) An income tax exemption for export earnings; (3) The export credit premium for the IPA; (4) CIC-CREGE 14-11 financing; (5) Incentives for trading companies (Resolution 643); (6) Accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CEX; (9) FINEX; (10) Duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) Exemption from state-administered value-added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) Financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Programs

(1) CACEX Export Financing

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a duration of up to one year. During the period of review, producers of certain castor oil products could obtain CACEX financing for up to 20 percent of the value of their previous year's exports.

Resolution 674, which became effective on June 11, 1983, set a maximum interest rate of 60 percent and required two interest payments, one 180 days after the loan was granted and the other at maturity. Resolution 882, which became effective on January 2, 1984, required the full interest payment at maturity. It also set the maximum interest rate at monetary correction (calculated by the change in the value of readjustable treasury bonds, "ORTN") plus 3 percentage points.

To find the interest differential, we compared two effective rates. For our benchmark, we took the national average rate for thirty-day discounts of accounts receivable, as reported in *Analise/Business Trends*. This rate includes the 1.5 percent tax on financial transactions ("IOF"), from which preferential loans are exempt. We then compounded this rate to find the effective annual commercial benchmark.

We consider the benefit, or the cash flow effect, from loans to occur when the borrower makes the interest payments. For Resolution 674 and 882 loans on which interest was paid during the period of review, we compared the preferential interest rate with the benchmark rate and multiplied the interest differential by the loan principal. We allocated the benefit over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 1.29 percent *ad valorem*.

On August 21, 1984, Resolution 950 superseded Resolution 882 and changed the short-term export financing program substantially. Resolution 950, which was made effective retroactively to January 2, 1984, made working capital financing available through commercial banks at prevailing market rates, with interest due upon maturity.

It authorized the Banco do Brasil to pay the lending institution an

"equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution can pass on to the borrower.

On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points. Because of the extensive changes in CACEX export financing made by Resolutions 950 and 1009, we do not have an adequate basis on which to calculate a use rate for each firm. Therefore, to calculate the current benefit from this program, we assumed that exporters borrow the maximum amount of financing available, which is 20 percent of the value of exports. We multiplied this amount by the new interest differential, which is the maximum equalization fee of 15 percent plus the 1.5 percent IOF, or 16.5 percent. On this basis, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the current benefit from this program to be 3.30 percent *ad valorem.*

(2) Income Tax Exemption for Export Earnings.

Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on a portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Two firms took advantage of this program in 1983. We calculated the benefit by multiplying the amount of tax-exempt profit by the corporate tax rate and allocating the result over total exports.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate.

At verification, one firm did not provide proof that it had made any investments in the specified companies and funds. Therefore, we calculated the benefit for this firm using the nominal 35 percent corporate income tax rate. The second firm presented proof that it had made an investment in the specified companies and funds. Therefore, we calculated the benefit using the effective tax rate. We calculated an effective tax rate of 27.86 percent for this company by dividing its net tax liability by its taxable profit. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.41 percent *ad valorem.*

(3) The Export Credit Premium for the IPI

Exporters of certain castor oil products are eligible for the maximum export credit premium for the IPI. The Brazilian government pays in cash a percentage of the f.o.b. price of the exported merchandise to exporters through the bank involved in the export transaction.

The Brazilian government eliminated the IPI export credit premium on December 7, 1979 but reinstated it on April 1, 1981. Effective June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the premium on exports to the United States. During verification, we confirmed that the Government of Brazil appropriately collected the export tax on shipments of certain castor oil products to the United States. We preliminarily determine that exporters of this merchandise received no benefits from this program during the period of review.

On May 1, 1985, the Brazilian government eliminated this program for exporters of certain castor oil products. Therefore, for purposes of cash deposits of estimated countervailing duties, we preliminarily determine that exporters of this merchandise continue to receive no benefits from this program.

(4) CIC–CREGE 14–11 Financing

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. Exporters of certain castor oil products participated in this program during the period of review.

There is no maximum interest rate for this program. Interest payments by the exporters of castor oil are normally made quarterly or semiannually, with the full principal to be repaid at maturity. We calculated the benefit based on the interest payment date in a manner similar to that used for CACEX export financing, using the same benchmark rate. We preliminarily determine the benefit from this program to be 0.11 percent *ad valorem.*

(5) Incentives for Trading Companies (Resolution 643)

Under this program, CACEX declares trading companies eligible to receive loans at preferential rates. Eligible firms have access to a line of credit that can be drawn down to purchase goods for export. The trading companies use the loans as advance payment for the goods purchased. These loans are subject to the same interest constraints as Resolution 674 loans. Normally, the term of the loan does not exceed 180 days, but the actual length varies, running from the date of receipt of the loan to the date of shipment of the goods. The interest is paid in full at maturity.

During the period of review, one firm received benefits under this program for the purchase of certain castor oil products for export. Since we were not able to tie each loan to a specific shipment, we calculated the benefit in a manner similar to CACEX export financing, based on the interest payment date. We allocated the benefit over the firm's total exports and weight-averaged the result by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.85 percent *ad valorem.*

(6) Accelerated Depreciation for Brazilian-made Capital Goods

Firms may depreciate Brazilian-made capital equipment at twice the normal rate allowed under Brazilian tax laws if they obtain approval from the Industrial Development Council ("CDI") for a plant expansion project. One firm benefited from this program in 1983.

To calculate the benefit, we multiplied the amount of accelerated depreciation declared on the income tax return filed in the review period by the corporate income tax rate and divided the result by the firm's total sales in 1984. Since this firm reduced its nominal corporate income tax rate by directed investments, we used the effective tax rate of 27.86 percent to calculate the benefit. We then weight-averaged the benefit by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit to be 0.004 percent *ad valorem.*

(7) Other Programs

We also examined the following programs and preliminarily find that exporters of certain castor oil products did not use them during the review period:

a. Fiscal Benefits for Special Export Programs ("BEFIEX");

b. Tax Reductions on Equipment used in Export Production ("CIEX")

c. Export Financing under Resolution 68 ("FINEX")

d. Duty-free treatment and tax exemptions on equipment used in export production ("CDI");

e. Export financing under Fundo Nacional de Participadoes ("FUNPAR");

f. Exemption from state-administered value-added taxes ("ICM") on domestic sales;

g. Export Promotion Financing ("PROEX");

h. Benefits from Import Substitution ("PROSIM"); and

i. Financing for the storage of merchandise destined for export ("Resolution 330").

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 2.66 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 2.66 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

The change in the CACEX export financing program increases the total estimated duty deposit rate to 4.67 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 4.67 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22903 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-052]

Non-Rubber Footwear From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 8, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Sylvia Chadwick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39889) the final results of its last administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). We began this review of the order under our old regulations. On October 15, 1985, after the promulgation of our new regulations, the petitioner, Footwear Industries of America, Inc., requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results of administrative review on August 8, 1986 (51 FR 28613). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine non-rubber footwear described in Part 1A of Schedule 7 of the Tariff Schedules of the United States Annotated, excluding items 700.5100 through 700.5400, 700.5700 through 700.7100 and 700.9000.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) The reembolso, a cash rebate of taxes; (2) Pre-export financing; and (3) Post-export financing.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, we determine the total bounty or grant to be 0.02 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore will instruct the Customs Service not to assess countervailing duties on any shipments of non-rubber footwear exported on or after January 1, 1983 and on or before December 31, 1983.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of non-rubber footwear from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22904 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Information Services (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc. having a place of business in Red Bank, NJ an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "(N-Phosphonacetyl-L-Aspartato) (1,2-diaminocyclchexane) Platinum (II) or Alkali Metal Salt U.S. Patent 4,284,579. The patent rights in this invention are

assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-22881 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

New

DoD FAR Supplements Part 30, Cost Accounting Standards, DD Forms 1861-1 and 1861-2.

Information principally concerns certain data required to control and account for government furnished property furnished contractors.

Reporting is required for accountability purposes.

Businesses or other for profit/small businesses or organizations.

Responses: 75.

Burden hours: 750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from LT COL Richard J. Wall, A&L(P)CPF, Room 3C800, Pentagon, Washington, DC 20301-8000, telephone (202) 697-6710. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22892 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Establishment of the Advisory Committee on Integrated Long-Term Strategy

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Advisory Committee on Integrated Long-Term Strategy has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Advisory Committee on Integrated Long-Term Strategy will serve the public interest by reviewing certain studies and providing the Secretary of Defense and the President's National Security Advisor with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war.

Membership will consist of government officials with responsibilities for long-range defense policy and private sector individuals with distinguished backgrounds in national security affairs. Total membership shall not exceed fifteen (15). From time to time, associated members may be appointed to the Committee to participate in an assessment of a particular issue. They shall number no more than five (5) at any one time.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-20891 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Technology and Standards Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Technology and Standards Panel will be held Wednesday, 12 November 1986 from 10:30 a.m. to 5:00 p.m. at SofTech in Waltham, MA.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Fisher, Room HO-22, IBM Research, P.O. Box 218, Yorktown Heights, New York, 10598 (914) 789-7653.

Patricia H. Means,

Office of the Secretary of Defense Federal Register Liaison Office, Department of Defense.

October 3, 1986.

[FR Doc. 86-22890 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Liverpool, Fulton County, IL, Flood Control Project

AGENCY: U.S. Army Corps of Engineers, Department of Defense .

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

Summary

1. *Description of Proposed Action.* The proposed project is intended to provide flood protection to the town of Liverpool, Fulton County, Illinois, which is located along the Illinois River, approximately 30 miles southwest of Peoria, Illinois.

2. *Alternatives for the Proposed Action.* A variety of structural and nonstructural measures were investigated during early planning phases. Evaluation of these measures on environmental, economic, and technical criteria resulted in identification of several alternatives which will be studied further. These are as follows:

a. The construction of a levee, built to the 50-year flood protection level, that would encircle the riverward side of

Liverpool, connecting it to an existing agricultural levee currently built at the 50-year level.

b. The construction of a levee, built to the 100-year flood protection level, that would encircle the riverward side of Liverpool, and connect to the above-mentioned agricultural levee which would be also raised up to the 100-year protection level.

c. Permanent relocation of residents to outside of the floodplain.

d. No Federal Action alternative.

3. *Public Involvement.* Various meeting have been held with local, State, and Federal officials to discuss the planning aspects, including alternatives of this project. Coordination will be maintained with interested agencies and individuals throughout this study. A public meeting, if requested, would be held after the distribution of the DEIS.

4. *Significant Issues to be Addressed.* Significant issues to be discussed in the DEIS are impacts to cultural sites found within the level alignment and borrow areas for levee material.

5. *Public Availability.* The Draft Environmental Impact Statement is expected to be available for public review in April 1987.

Additional information concerning the proposed project may be requested from: Neil A. Smart, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204–2004.

Dated: October 6, 1986.

Neil A. Smart,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–22876 Filed 10–8–86; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF ENERGY

Intent To Grant Partially Exclusive Patent Licenses to Eidolonics of Oak Ridge, TN, and Bio-Imaging Systems, Inc., of Winchester, MA

Notice is hereby given of an intent to grant Eidolonics, of Oak Ridge, Tennessee, and Bio-Imaging Systems, Inc., of Winchester, Massachusetts, partially exclusive licenses to practice in the United States the invention described in U.S. Patent No. 4,389,670, entitled "Electronic Method for Autofluorography of Macromolecules on Two-dimensional Matrices". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed licenses will be partially exclusive, i.e., licenses will be granted to Eidolonics and Bio-Imaging Systems, but no further licenses will be granted on the patent for the duration of the licenses. The proposed partially exclusive licenses will be subject to a license and other rights retained by the U.S. Government. DOE intends to grant the licenses, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed licenses; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the licenses if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the licenses are in the public interest.

Issued in Washington, DC, on October 2, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86–22855 Filed 10–8–86; 8:45 am]

BILLING CODE 6450–01–M

Intent To Grant Exclusive Patent License to Mr. Donald E. Hull and Mr. Thomas E. Bieniewski; Los Alamos, NM

Notice is hereby given of an intent to grant to Mr. Donald E. Hull and Mr. Thomas M. Bieniewski, of Los Alamos, New Mexico, an exclusive license to practicein the United States the invention described in U.S. Patent No. 4,431,901, entitled "Induction Plasma Tube". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written response to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on October 2, 1986

J. Michael Farrell,

General Counsel.

[FR Doc. 86–22873 Filed 10–8–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–273–003 et al.]

Electric Rate and Corporate Regulation Filings; Kansas City Power & Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Kansas City Power & Light Company

[Docket No. ER86–273–003]

October 6, 1986.

Take notice that on September 29, 1986, Kansas City Power & Light Company (KCPL) tendered for filing a compliance report stating that no revenues have been collected from KPL's municipal wholesale customers in excess of revenues under the "settlement rates" established by the Offer of Settlement.

The company states that a refund check was mailed to Kansas Electric Power Cooperative Inc. on August 28, 1986.

A copy of this filing was sent to all customers named in Docket Nos. ER86–273–001, ER86–273–002 and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: October 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company

[Docket No. ER86-721-000]

October 6, 1986.

Take notice that on September 30, 1986, Central Power and Light Company ("CPL") tendered for filing proposed changes in rates applicable to five non-generating wholesale cooperative customers served under CPL's FERC Electric Tariff Original Volume No. 1 and proposed changes in rates applicable to two partial-requirements municipal customers, the Public Utility Board of Brownsville, Texas and the City of Robstown, Texas. CPL has proposed a phased rate increase. The Level B rates, proposed to be effective on December 1, 1986, would increase revenues from jurisdictional sales by $4,893,036, based on calendar year 1987. The Level A rates, proposed to be effective on November 30, 1986, would increase revenues from jurisdictional sales by $2,600,809, based on calendar year 1987. CPL also proposes to modify its fuel adjustment clause (FAC). CPL also seeks a waiver of the Commission's FAC regulations so that test energy from a prospective nuclear facility will be treated differently than it otherwise would be under the FAC.

CPL states that copies of its filing have been served on its customers affected by the filing and upon the Public Utility Commission of Texas.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER86-702-000]

October 6, 1986.

Take notice that on September 25, 1986, Puget Sound Power and Light Company (Puget) tendered for filing a Distribution Plan Worksheet showing the calculation of the Monthly Cost of Puget's Distribution Plant.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation, Citizens Utilities Company, Green Mountain Power Corporation

[Docket No. EC86-30-000]

October, 3, 1986.

Take notice that on October 2, 1986, Central Vermont Public Service Company, on behalf of itself and the other two above-named utilities, submitted a supplement to their earlier application in this docket. In this supplement the filing utilities state that errors have been discovered in their earlier application concerning the basis on which each of the three utilities was to purchase the stock that was the subject of the application. The applicants intened that stock be purchased by each of the three on the basis of actual kWh sales in 1984 to ultimate consumers in Vermont. The applicants have accordingly amended their application.

The applicants state that a copy of the amended application has been mailed to the Vermont Public Service Board.

Comment date: October 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Southeastern Power Administration

[Docket No. EF86-3041-000]

October 6, 1986.

Take notice that on September 22, 1986, the Under Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight September 30, 1986, Rate Schedules KP-1-C, JHK-2-A, JHK-3-A and PH-1-A for power from Southeastern Power Administration's (SEPA) Kerr-Philpott Projects. The approval extends through September 30, 1991. The Under Secretary states that the Commission, by order issued July 6, 1983, in Docket No. EF-3041, confirmed and approved Rate Schedules KP-1-E and JHK-1-E through September 30, 1986.

SEPA proposes in the instant filing to extend Rate Schedule KP-1-C, to replace JHK-1-E with JHK-2-A and JHK-3-A and establish a new Rate Schedule Ph-1-A for new preference customers in the Appalachian Power Company area. The rate adjustment will extent present rates. The increased operation and maintenance costs and replacement costs are offset by delays in replacements. The rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending September 30, 1991.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person dersiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22917 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3194-003]

Joseph M. Keating; Availability of Environmental Assessment and Request for Comments

October 2, 1986.

In accordance with the National Environmental Policy Act of 1969 and the Regulations of the Council on Environmental Quality, the Ofice of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license for the proposed Foottrail Hydroelectric Project on the Silver Fork of the American River in El Dorado County, California, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is now requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding the results of studies, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Foottrail Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Section, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, November 20, 1986, and should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 3194-003 to all comments.

For further information please contact Brad Bortner, Environmental Assessment Coordinator, at (202) 376-1763.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22918 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-824-003, et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co., et al.

October 3, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP85-824-003]

Take notice that on September 12, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-824-003 a petition to amend the the order issued October 11, 1985, in Docket No. CP85-824-000, 33 FERC ¶ 62,057, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of various receipt and delivery points, the deletion of various receipt points, the authorization not to restrict CIG to any specified natural gas supplier for its first deliveries to the City of Colorado Springs (CCS), the extension of the term of the transportation service to no later than January 19, 1988, and pre-granted abandonment authority, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

CIG states that by the order issued October 11, 1985, the Commission authorized CIG to transport, on an interruptible basis, up to 27,000 Mcf of natural gas per day for CCS, pursuant to a transportation service agreement dated August 15, 1985. Such gas is purchased by CCS from Western Natural Gas and Transmission Corporation (Western). The gas is received by CIG from Williston Basin Interstate Pipeline Company (Williston) at existing interconnections in Park and Freemont Counties, Wyoming. CIG delivers thermally equivalent volumes to CCS at two existing interconnections between CIG and CCS in El Paso County, Colorado. CIG states that the order issued October 11, 1985, provides for transportation service from the receipt points specified in the agreement between Western and CCS, dated June 26, 1985. Transportation service commenced pursuant to the agreement on October 31, 1985.

CIG states that it has also transported natural gas for CCS from the Coronado-Oregon Basin receipt point located in Park County, Wyoming, and from the Wilburton Gas located in Morton County, Kansas, to the delivery points stated hereinabove. Such transportation service is provided pursuant to section 311 of the Natural Gas Policy Act and the required reports were filed in Docket No. ST86-930-000.

CIG requests authorization to add the Coronado-Oregon Basin and Wilburton Gas Plant receipt points and to add the Drennan Road, McClintock and Security delivery points. CIG further requests that the transportation authority requested not be restricted to any specified natural gas supplier and allow for the addition and deletion of receipt points to and from its transmission system. CIG states that it would file on or about January 31 of each year tariff revisions, as necessary, to keep the Commission informed of any receipt point changes.

Finally, CIG requests authority to extend the term of the transportation service for a period no later than January 19, 1988, and for pregranted abandonment authority.

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP86-728-000]

Take notice that on September 17, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-728-000 an application pursuant to section 7(7) of the Natural Gas Act for authorization to transport up to a maximum of 250 billion Btu equivalent per day of natural gas on an interruptible basis for Cities Service Oil and Gas Corporation (Cities Service), and the construction and operation of facilities required to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authority to provide an interruptible transportation service for Cities Service for a period of two years from the first delivery and month to month thereafter. Natural would provide such service pursuant to the terms and conditions contained in a gas transportation agreement (Agreement) between Natural and Cities Service dated May 27, 1986, it is stated.

Natural states that it has been informed by Cities Service that the gas transported by Natural is being sold to UER Marketing Company, who in turn proposes to resell such gas to various end users, local distribution companies and intrastate pipelines.

Natural proposes to receive natural gas for the account of Cities Service at the following points of receipt: (1) A proposed point of interconnection between the facilities of Natural and the Matagorda Offshore Pipeline System located in the James Power and James Hewitson Survey A-53, Refugio County, Texas; (2) and existing point of interconnection between the measurement facilities of Natural and the facilities of Transcontinental Gas Pipe Line Corporation (Transco) located in H.&T.C.R.R. Survey A-186, Wharton County, Texas; (3) an existing point of interconnection between the measurement facilities of Natural and the facilities of Liberty Natural Gas Company (Liberty) located in the Juan J. Acosta Survey A-65, Nacoghoches County, Texas; (4) an existing point of interconnection between the measurement facilities of Natural and the facilities of Houston Pipeline Company (Houston) located in the Jose Vincente Lopex De Herrfera Grant, A-145, Nueces County, Texas; and (5) and existing point of interconnection between the measurement facilities of Natural and the facilities of ONG Transmission Company located in Section 7, Township 4 North, Range 7 West, Grady County, Oklahoma.

Natural proposes to transport on a fully interruptible basis and would redeliver volumes of gas for the account of Cities Service to the following points of delivery: (1) An existing point of interconnection between the facilities of Natural and United Gas Pipe Line Company (United) located at the outlet of Texaco's Henry Gas Plant in Section 21, Township 13 South, Range 4 East, Vermilion Parish, Louisiana; (2) an existing point of interconnection between the measurement facilities of Natural and United located in the A. Viesca Survey A-77, Polk County, Texas; and (3) the existing points of interconnection between the facilities of Natural, or its designee, and the measurement facilities of United, or its designee located at various points in the vicinity of the High Island Offshore System, Offshore Texas, as listed below:

a. High Island Block A-273
b. High Island Block A-317
c. High Island Block A-327/A-332
d. High Island Block A-330
e. High Island Block A-474
f. High Island Block A-489
g. High Island Block A-511.

Natural proposes to charge Cities Service the following transportation rates:

Point of receipt	Transportation rate (per billion Btu) (cents)
Refugio Co., TX:	
Polk Co., TX	0.083
Vermilion Parish, LA	.122
HIOS-Offshore TX	.122
Wharton Co., TX:	
Polk Co., TX	.056
Vermilion Parish, LA	.096
HIOS-Offshore TX	.096
Nacogdoches Co., TX:	
Polk Co., TX	.030
Vermilion Parish, LA	.100
HIOS-Offshore TX	.100
Nueces Co., TX:	
Polk Co., TX	.083
Vermilion Parish, LA	.122
HIOS-Offshore TX	.122
Grady Co., OK:	
Polk Co., TX	.120
Vermilion Parish, LA	.158
HIOS-Offshore TX	.158

In addition, Natural proposes to redeliver gas to Cities Service less certain percentage reductions for fuel consumed and lost and unaccounted-for gas or would charge Cities Service for fuel consumed and lost and unaccounted-for gas as provided for under the Agreement.

Natural requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Natural proposes to construct two 12-inch taps on its #1 and #2 mainlines in Refugio County, Texas. It is stated that the estimated cost of these taps is $60,000. Northern Natural Gas Company (Northern) would install the measurement facilities and reimburse Natural for the actual cost of the proposed taps, it is stated.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Pacific Gas Transmission Company

[Docket No. CP86-735-000]

Take notice that on September 23, 1986, Pacific Gas Transmission Company PGT), 160 Spear Street, San Francisco, California 94105-1570, filed an application under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 18,000 Mcf of natural gas per day for the account of Kerr-McGee Chemical Corporation (Kerr-McGee) and the redelivery of such natural gas to Kerr-McGee at a point of interconnection between the pipeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on PGT's system. It is alleged that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-49-001]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-49-001 a petition to amend the order issued February 2, 1984, in Docket No. CP84-490-000, 26 FERC ¶ 61,114, pursuant to section 7(c) of the Natural Gas Act so as to reflect changes in the interruptible transportation of natural gas for Grantie State Gas Transmission, Inc. (Grante State), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by the order issued February 2, 1984, it was authorized to transport, on an interruptible basis, up to 9,814 Mcf of natural gas per day for Granite State. The gas transported is a portion of the domestic gas volumes purchased by Granite State from Consolidated Gas Supply Corporation (Consolidated).

Petitioner seeks authorization to transport up to 20,000 dt equivalent of natural gas per day on an interruptible basis. It is stated that the transportation service would be on a dekatherm equivalent basis with Petitioner delivering equivalent dekatherms less quantities for Petitioner's applicable fuel and use requirements.

Petitioner also requests an additional receipt point for Granite State's account at the existing interconnection between Petitioner and Algonquin Gas Transmission Company (Algonquin) at the Mahwah exchange meter station in Bergen County, New Jersey, at Petitioner's Valve 328-1 plus 4.22 miles. It is stated that the gas received at the Mahwah receipt point would be delivered to the existing East Longmeadow delivery point and/or to Mendon sales meter station, the existing receipt point at the interconnection of Petitioner and Algonquin in Worcester County, Massachusetts, at Petitioner's Valve 266A-112.

Petitioner also proposes to eliminate the limitation that gas transported by Petitioner must be gas purchased by Granite State for Consolidated.

For this revised transportation service, Petitioner states that it would charge the following rates and applicable fuel and use requirements:

Receipt point	Delivery point(s)	Rate per Dekatherm	Percent of fuel
Mendon	East Longmeadow	6.01	0.5
Mahwah	East Longmeadow	9.39	1.07
	Mendon	11.90	1.31

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-441-019]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-019 a petition to amend the order issued June 14, 1985, in Docket No. CP84-441-000, *et al.*, 31 FERC ¶61,308, pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Connecticut Natural Gas Corporation (CNG), at additional receipt and delivery points and to provide the transportation on a dekatherm equivalent basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioner seeks to amend the certificate of public convenience and necessity granted in Docket No. CP84-441-000, *et al.*, which authorized Petitioner, *inter alia*, to transport, on a firm basis, up to 15,000 Mcf of natural gas per day for CNG to enable CNG to receive firm delivery of volumes attributable to natural gas services rendered by Consolidated Gas Transmission Corporation (Consolidated). Petitioner states that it was authorized to receive transportation volumes of gas for CNG's account from Consolidated at the interconnection of the pipelines of Petitioner and Consolidated at the Ellisburg sales meter station located in Potter County, Pennsylvania, at Petitioner's valve

313G–102, and to deliver the gas to CNG at the Bloomfield sales meter station (Bloomfield) located in Hartford County, Connecticut, at Petitioner's valve 347–1 plus 9.38 miles. This service is currently rendered under Petitioner's Rate Schedule T–149.

Petitioner proposes to amend the certificate issued in Docket No. CP84–441–0001 *el al.*, to provide additional receipt and delivery points for the transportation quantities of gas and to provide the transportation on a dekatherm equivalent basis. Petitioner states that by a replacement contract dated August 28, 1986, which would supersede the transportation agreement between Petitioner and CNG which is on file as Rate Schedule T–149 to Petitioner's FERC Gas Tariff, Petitioner and CNG have agreed to the following changes:

(1) To transport up to 15,390 dt equivalent of natural gas per day on a firm basis for the account of CNG. The transportation service would be on a dekatherm equivalent basis. Petitioner would deliver equivalent dekatherms less quantities for Petitioner's applicable fuel and use requirements;

(2) To add the following points of receipt:

(a) National Fuel Gas Supply Corporation, Rose Lake sales in Potter County, Pennsylvania, at MLV 313G–121;

(b) Columbia Gas Transportation Corporation, Milford sales in Pike County, Pennsylvania, at MLV 323–1 plus 18.01 miles (Milford);

(c) Transcontinental Gas Pipe Line Corporation, Rivervale sales in Bergen County, New Jersey, at MLV 330–1 plus 1.43 miles (Rivervale); and

(d) Algonquin Gas Transmission Company, Mahwah interconnection in Bergen County, New Jersey, at MLV 328–1 plus 4.22 miles (Mahwah).

Petitioner states that its receipt of gas for CNG's account at Milford, Rivervale, and Mahwah would be subject to operating conditions as determined in Petitioner's sole opinion; and

(3) To add the following points of delivery and maximum quantity limits:

Points of delivery	Dt Equivalent of gas daily quantity limit
(a) North Bloomfield sales in Hartford County, Connecticut, at MLV 348–1 plus 3.82 miles (North Bloomfield); and	10,260
(b) Putnam Lake sales in Fairfield County Connecticut, at MLV 337–1 plus 0.12 miles (Putnam Lake)	10,260

Petitioner states that the dt equivalent of gas daily quantity limit at the existing Bloomfield point would be 15,390 dt equivalent.

Petitioner states that the sum of its deliveries to CNG under Rate Schedule T–149 at all of the delivery points would not at any time exceed the proposed total transportation quantity of 15,390 dt equivalent of natural gas per day. Petitioner further states that it would not be obligated to deliver the full daily quantity limit of gas at North Bloomfield and Putnam Lake on any day that CNG requests deliveries of sale gas at those points due to capacity limits at the meter stations.

Petitioner proposes to charge the effective T–149 rates for this revised transportation services.

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86–732–000]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–732–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new delivery points for its customer, Granite State Gas Transmission, Inc. (Granite State), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to Granite State's request, Tennessee has agreed to establish two interruptible delivery points for Granite State at (1) Tennessee's existing Sales Meter Station in Mahwah, New Jersey (Mahwah), and (2) Tennessee's existing Sales Meter Station in Mendon, Massachusetts (Mendon). It is stated that both Mahwah and Mendon are existing points of interconnection with Algonquin Gas Transmission Company (Algonquin). It is further stated that deliveries at these two new delivery points would be interruptible and shall not exceed 20,000 dt equivalent of natural gas per day at either delivery point.

Tennessee states that deliveries to the proposed Mahwah delivery point are in the zone to which Tennessee's CD–5 rates would otherwise be applicable. Tennessee requests a waiver of its CD Rate Schedule to permit Tennessee to charge Granite State the CD–6 rate for deliveries to the proposed Mahwah delivery point. Tennessee further states that absent the proposed interruptible deliveries in Zone 5, all gas would be delivered in Zone 6; therefore, Tennessee submits that the waiver is necessary to prevent a potential under-recovery of costs and the exposure to Tennessee's other customers of increased costs. Granite State has agreed to pay the CD–6 rates for deliveries to Mahwah.

Tennessee also states that Algonquin would file a related application in the near future.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 22919 Filed 10–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CS67-45, et al.]

Applications for Small Producer Certificates; [1] Bill J. Graham Oil and Gas (Bill J. Graham) et al.

October 2, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before October 20, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS67-45	[1] 9-24-86	Bill J. Graham Oil and Gas, (Bill J. Graham), P.O. Box 7037, Midland, Texas 79708.
CS71-1006	[2] 9-18-86	Santa Fe Braun Inc., (C.F. Braun and Co.), 3131 Turtle Creek Blvd., Dallas, Texas 75219-5478.
CS86-93-000	8-29-86	Matrix Partners, P.O. Box 17424, San Antonio, Texas 78217.
CS86-94-000	9-8-86	PAN-OK Production Company, Inc., P.O. Box 30431, Lafayette, Lousisiana 70506.
CS86-95-000	9-12-86	Conn Energy, Inc., 935 Gravier Street, Suite 1900, Box D-5, New Orleans, Louisiana 70112.
CS86-96-000	9-15-86	Wayne Bernard Eggemeyer, 5413 Beverly Drive, San Angelo, Texas 76904.
CS86-97-000	9-18-86	Plumb Oil Company, Inc., Plumb Offshore, Inc. and Plumb Operating Company, Inc., 3280 One Allen Center, 500 Dallas, Houston, Texas 77002-4792.
CS86-98-000	9-22-86	Worth Minerals Company, P.O. Box 1718, Fort Worth, Texas 76101.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] Letter dated September 15, 1986, requesting redesignation of small producer certificate.

[2] Letter dated September 15, 1986, advising that by Certificate of Amendment of Certification of Incorporation effective February 1, 1986, C.F. Braun and Co. changed its name to Sante Fe Braun Inc.

[FR Doc. 86-22920 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-48-000,001]

ANR Pipeline Co; PGA Rate Change Filing

October 6, 1986.

Take notice that on September 30, 1986, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Sixth Revised Tariff Sheet No. 18
Fourth Revised Tariff Sheet No. 19

Sixth revised Tariff Sheet No. 18 reflects a 3.65¢a per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1 and MC-1 Rate Schedules, an increase of $0.035 in the monthly demand rate of CD-1 and MC-1 Rate Schedules and a decrease in ANR's one-part rates applicable to Rate Schedules SGS-1 and LVS-1 of 3.24¢ and 3.48¢ respectively, per dth.

ANR states that the change in rates set forth above is a result of the following factors which are outlined below:

A. Factors resulting in cost reductions.

1. Commodity Costs—a. Substantial reductions in the cost of Canadian gas that have been achieved through the operation of price adjustment mechanisms contained in gas purchase contracts.

b. Reductions in the cost of gas from domestic producers by reduction in the market-out price where permitted by contract and through renegotiation of a number of gas purchase contracts.

c. A reduction for the combination of two surcharges associated with decreases in the carrying charges on ANR's take-or-pay balances and charges associated with one-time payments and other reimbursement arrangements negotiated with suppliers in lieu of take-or-pay payments. (See Article IX, B of the Stipulation and Agreement at *ANR Pipeline Company*, Docket Nos. RP82-80, *et. al.).*

B. Factors resulting offsetting cost increases.

1. Commodity Cost—a Producer price increases for regulated supply sources as authorized by the Natural Gas Policy Act of 1978.

b. An increase in the surcharge for deferred gas costs from a positive 6.32¢ per dth to a positive 12.72¢ per dth.

2. Demand Costs—Increases in demand charges in effect for Texas Gas Transmission Corporation and Northern Natural Gas Company.

Fourth revised Tariff Sheet No. 19 reflects that since there were zero MSAC's reported by ANR's customers, there is no PGA reduction.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22921 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-169-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986, ANR Pipeline Company (ANR) tendered for filing, proposed changes in its FERC Gas Tariff, Original Volume No. 1. Original Volume No. 1-A and Original Volume No. 2, to become effective November 1, 1986. ANR's filing states that the filing effectuates a rate decrease which is designed to recover ANR's overall costs of service, developed by utilizing a base period for the twelve months ended May 31, 1986, adjusted for known and measurable

changes through the end of the test period, February 28, 1987. The filed cost of service is approximately $64 million, or 8%, lower than the non-gas cost of service which underlies ANR's present rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22922 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-737-000 and CI86-738-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Applications for Limited-Term Blanket Abandonment and Limited-Term Blanket Sales Certificates With Pre-Granted Abandonment

October 6, 1986.

Take notice that on September 19, and September 22, 1986, as supplemented on September 29, 1986, Arkla Energy Resources, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed applications in Docket Nos. CI86-737-000 and CI86-738-000. In Docket No. CI86-738-000, Applicant, on behalf of its producer-suppliers, requests limited-term blanket abandonment of certain sales to Applicant of natural gas by Applicant's eligible producer-suppliers for resale in interstate commerce. In Docket No. CI86-737-000, Applicant requests, on behalf of its producer-suppliers limited-term blanket certificates of public convenience and necessity with pre-granted abandonment authorizing the sale of such gas by the eligible producer-suppliers for resale in interstate commerce. Applicant also requests on behalf of its eligible producer-suppliers a waiver of certain Commission regulations, including certain of those in Part 154 thereof, 18 CFR Part 154 (1986). Applicant requests such authorizations for a term of one-year.

Applicant states that it seeks permission for eligible producer-suppliers that wish to participate in the opportunity to sell to other purchasers gas that Applicant temporarily releases from its contracts with those producer-suppliers. Applicant states that these third-party sales would enable eligible producer-suppliers to maintain their production instead of having it curtailed for lack of markets. Applicant states that the release and opportunity for those sales would also afford Applicant relief from its take-or-pay obligations. Moreover, according to Applicant all quantities so released and sold would enter the marketplace at market-responsive prices, thereby providing consumers with lower-priced gas and helping to maintain throughput levels on Applicant's pipeline system. Applicant states that the Commission's granting of the approvals sought herein would therefore serve the public interest and the public convenience and necessity.

Applicant states that the authorizations are requested to cover its affiliates, the Exploration & Production Division of Arkla (Arkla E&P) and Arkla Exploration Company (AEC). Applicant states that Arkla E&P produces certain gas supplies which are delivered directly into Applicant's facilities for use as part of Applicant's system supply. Applicant states that AEC is an affiliated producer that conducts exploration and production activities.

Applicant states that Commission approval of its requests would constitute issuance to Applicant's eligible producer-suppliers of all requisite limited-term blanket abandonment authorization (coextensive with the extent of the release executed by Applicant and an eligible producer-supplier on mutually agreeable terms and conditions) and limited-term blanket sales certificate authorization with pre-granted abandonment, and any other authorizations that may be necessary to permit eligible producer-suppliers to market the gas released by mutual agreement with Applicant. Applicant states that producer-suppliers will qualify for the authorizations requested herein upon execution of a written temporary release from their contracts with Applicant, such release to contain terms acceptable to both parties.

Applicant states that the requests herein are a reflection of Applicant's existing policy and past practice regarding the release of certificated gas to producer-suppliers who wish to sell their gas temporarily in the spot market. Applicant states it has heretofore executed mutually agreeable, limited-term releases with non-affiliated producer-suppliers as well as with its affiliate producer-supplier. Primarily to benefit its non-affiliate producer-suppliers, each of whom would otherwise have to file individual applications similar to this one and pay the requisite filing fee, Applicant states it seeks to put in place a vehicle whereby all producer-suppliers can quickly get their gas to market once they locate a willing purchaser. Applicant states it stands ready to negotiate mutually agreeable releases with any producer-supplier in furtherance of this objective, consistent with sound business practices and the prudent management of Applicant's long-term system gas supply.

Applicant states it will file with the Commission and serve on its customers and interested state commissions within forty-five days following the close of each calendar quarter, reports identifying each producer-supplier that has availed itself of the authorizations granted by the approval it requests herein. With its quarterly reports, Applicant states it will also file or cause to be filed the following information with respect to all eligible quantities released by Applicant, which information must be provided to Applicant by the producer-supplier as an additional condition of eligibility for the authorizations obtained hereby:

(1) The FERC Gas Rate Schedule Number for the underlying certificated sale to Applicant;

(2) The corresponding producing field(s);

(3) The NGPA price category(s) covered under each Rate Schedule;

(4) The contract price to Applicant under each Rate Schedule ($/MMBtu);

(5) The quantities (MMBtu), by NGPA price category, of gas released under the abandonment authorization;

(6) The quantities (MMBtu), by NGPA price category, of gas delivered to each new purchaser or its designee;

(7) The amount of take-or-pay relief credited to Applicant for each third-party sale by Rate Schedule and NGPA price category.

Applicant states that all or any part of the gas that is currently committed to Applicant under contracts with producer-suppliers and that remains subject to the Commission's Natural Gas Act jurisdiction, including gas qualifying under sections 102(d), 104, 106, 108, and 109 of the Natural Gas Policy Act of 1978 ("NGPA"), would be covered by the limited-term abandonment and sales authorizations sought herein, to the

extent that Applicant and a producer-supplier agree to the release of the gas.

Applicant requests that the Commission waive those provisions of Part 154 of its regulations, 18 CFR Part 154 (1986), that would otherwise require Applicant's eligible producer-suppliers to establish and maintain rate schedules with respect to the third-party sales. Applicant states that the limited-term blanket sales certificate issued to an eligible producer-supplier as a result of the Commission's approval of this application would be conditioned so that the rates charged in the authorized third-party sales could not exceed the applicable maximum lawful prices prescribed by the NGPA for the gas in question, including any rate that the producer-supplier has established its right to collect pursuant to Parts 273, 274, or 275 of the Commission's regulations, 18 CFR. Parts 273–275 (1986).

In addition, Applicant requests that the Commission waive the provision of 18 CFR 154.94(h) that would otherwise require Applicant's eligible producer-suppliers to file blanker affidavits covering the third-party sales to permit the automatic collection of appropriate monthly inflation adjustments. Applicant further requests that, to the extent the eligible producer-suppliers already qualify for collection of any applicable allowances under section 110 of the NGPA, the Commission waive the provision of 18 CFR 154.94(k) that would otherwise require them to file blanket affidavits covering the third-party sales in order to collect the section 100 allowances.

Finally, Applicant requests the waiver of any and all otherwise applicable orders, rules, regulations, and reporting requirements, now effective or hereafter promulgated or issued by the Commission, to the extent they are inconsistent with the authorizations granted by the Commission's approval of its applications.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before October 20, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become party to the proceeding herein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22923 Filed 10–8–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-8-004, 005]

Canyon Creek Compression Co.; Change in FERC Gas Tariff

October 3, 1986.

Take notice that on September 25, 1986, Canyon Creek Compression Company (Canyon) tendered for filing Third Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1986. Canyon states that the filing is submitted in compliance with Article IV of Canyon's Stipulation and Agreement in Docket No. RP85–5–000 (Agreement). The revised rate levels reflect the effect of reducing the amount of AFUDC reflected on Canyon's books by $142,716. The $142,716 reduction in AFUDC was the result of the final outcome of Canyon's audit proceeding.

However, in its September 25, 1986, filing, Canyon failed to make the necessary adjustments to reflect the proper amount for the Amortization of Permanent Book and Tax Differences. Therefore, on October 1, 1986, Canyon submitted Substitute Third Revised Sheet No. 4 to be accepted for filing in lieu of the Third Revised Sheet No. 4 previously submitted on September 25, 1986.

Canyon requests waiver of the Commission's regulations and the Agreement to the extent necessary to permit the Substitute third Revised Sheet No. 4 to become effective on October 1, 1986.

Copies of these filings have been mailed to Canyon's jurisdictional customers, interested state regulatory agencies, and all parties set forth on the official service list at Docket No. RP85–8–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22924 Filed 10–8–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-167-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2 to become effective on November 1, 1986.

Columbia Gulf states that the purpose of the filing is to provide for the level of rates and changes required to recover its costs. When compared to the settlement rates currently in effect at Docket No. RP84–74, the proposed change in rates shows a revenue decrease of approximately $37.1 million.

In addition to reflecting the variations in costs, the proposed rates reflect the effect of a Modified Fixed-Variable rate design, and a projected level of transportation volumes and revenues.

Also included are tariff sheets to implement zone rates, a provision to allow Columbia Gulf the option to provide the gas requirements for gas used and unaccounted for and maximum and minimum rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22926 Filed 10–8–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC86-30-000]

Central Vermont Public Service Corp. et al.; Filing

October 3, 1986.

Take notice that on September 25, 1986, Central Vermont Public Service Corporation, on behalf of itself and Citizens Utilities Company and Green Mountain Power Corporation, tendered for filing an application under section 203 of the Federal Power Act for authority to acquire securities of Vermont Electric Power Company, Inc.

The filing company states that a copy of the application has been mailed to the Vermont Public Service Board.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22925 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-22-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 30, 1986, filed Substitute Eleventh Revised Sheet No. 31, to its FERC Gas Tariff, Original Volume No. 1, to comply with the Commisson's August 29, 1986, suspension order in this proceeding. The substitute tariff sheet reduces Consolidated's August 1 filed sales commodity rates by 4.89¢/Dt to reflect reduced rates from pipeline suppliers as required by Ordering Paragraph (D) of the referenced order.

Copies of the filing were served upon Consolidated's jurisdictional customers, interested state commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22927 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-46-000, 001]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 6, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on September 30, 1986, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1986.

Fifth Revised Sheet No. 24
Original Sheet No. 24A
Thirty-Seventh Revised Sheet No. 27
Twenty-First Revised Sheet No. 24A

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is a decrease of 7.46¢ per dekatherm (dth). The deferred gas cost adjustment is a reduction of 3.10¢ per dth. These changes result in a total net jurisdiction purchase gas cost charge of 1.9003¢ per dth, to become effective November 1, 1986.

Kentucky West further states that the Tariff sheet filed herewith does not reflect the Market Incentive Purchase Gas Cost Charge which the Commission rejected at its meeting on March 26, 1986, and is filed without prejudice to any further pleadings or tariff filings, which Kentucky West may make in light of that rejection.

Kentucky West states that this PGA filing has been prepared in full compliance with the Commission's order of September 18, 1986. Said order summarized the results of an informal technical conference on June 2, 1986 concerning Kentucky West's purchase gas adjustment filing in Docket No. TA86-4-46-000.

Kentucky West is proposing a new § 18.1(b) to its PGA clause to permit Kentucky West, in addition to the required semi-annual PGA filing, to adjust its gas rates on one day's notice to reflect anticipated known and measurable changes in its markets or purchase gas costs.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP86-52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such notions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22928 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-5-000, 001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

October 6, 1986.

Take notice that on September 30, 1986, Midwestern Gas Transmission Company (Midwestern) tendered for filing ten copies of Twenty-second Revised Sheet No. 6 and Twelfth Revised Sheet No. 8 to Original Volume No. 1 of its FERC Gas Tariff, to be effective November 1, 1986. Midwestern States that this filing implements a Current Purchased Gas Cost Adjustment pursuant to Article XVIII of the General Terms and Conditions (the Northern System PGA clause) in order to reflect in the rates Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 the effective gas charges from TransCanada PipeLines Ltd.

(TransCanada), the sole supplier of gas to Midwestern's Northern System. Midwestern also states that this filing does not change the present Northern System Gas Surcharge.

Midwestern states that the Current Purchased Gas Cost Adjustment reflection on Twenty-second Revised Sheet No. 6 consists of Unit Demand Rate Changes of $.91 per Dkt for Rate Schedules CR-2 and CRL-2, $.0748 per Dkt for Rate Schedule SR-2, and $.0299 per Dkt for Rate Schedule I-2, and a Unit Gas Rate Change of 15.31 cents per Dkt. Midwestern states further that the unit rate changes are based upon the demand and commodity gas rates under Midwestern's gas contracts with TransCanada, and Midwestern's estimated sales billing units and system fuel requirements for the November 1986-March 1987 PGA period.

Midwestern states that Twelfth Revised Sheet No. 8 reflects zero Estimated Incremental Pricing Surcharges for Midwestern's customers under Rate Schedules CR-2, CRL-2, SR-2 and I-2 in accord with Article XXIII of the General Terms and Conditions.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22929 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-170-000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986 Mississippi River Transmission Corporation (Mississippi) filed pursuant to Section 4 of the Natural Gas Act and the regulations of the Federal Energy Regulatory Commission (Commission) thereunder proposed changes in its FERC Gas Tariff. Mississippi states the purpose of the filing is to reflect increases in rates for service rendered under its FERC Gas Tariff. The changes in rate level requested by Mississippi reflect an increase in jurisdictional sales revenues of $30.2 million annually when compared to rates currently in effect.

Mississippi states the proposed rate change is necessary to recover increases in its jurisdictional cost of service, except gas costs which are reflected in the proposed filing on the basis of the average unit cost of purchased gas contained in Mississippi's PGA rate change effective September 17, 1986 at Docket No. TF86-1-25. Mississippi states that the principal causes of the rate increases are (1) increases in operating and maintenance expenses; (2) an increase in rate base due primarily to installation of new facilities; (3) an increase in the overall rate of return and related income taxes; and (4) a reduction in projected sales.

Copies of the filing have been served upon Mississippi's jurisdictional customers, and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest Mississippi's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR Sections 385.211, 385.214 (1986). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Mississippi's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22930 Filed 10-08-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-206-006 and TA86-3-59-006]

Northern Natural Gas Co., Division of Enron Corp.; Change in Rates and Tariff Revisions

October 6, 1986.

Take notice that on September 30, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective October 1, 1986 the following tariff sheets to be included in Northern's FERC Gas Tariff:

Third Revised Volume No. 1

Forty-Second Revised Sheet No. 4a
Thirty-Sixth Revised Sheet No. 4b
Fifth Revised Sheet No. 4b.1

Original Volume No. 2

Forty-Fourth Revised Sheet No. 1c

Reason for Filing

Northern in its Renewal of Motion for Expedited Consideration of Petition for a Limited Waiver of the Commission's Regulations (Renewal of Motion) filed August 18, 1986 stated that when the waiver was granted and Northern opened its system, Northern would voluntarily lower its sales rates to the Docket No. RP85-206 settlement level and would implement the settlement rate design. The Commission granted the waiver in its Order dated September 26, 1986. Northern is opening its system on October 1, 1986. This filing is made to fulfill Northern's commitment to lower its sales rates to the RP85-206 level and implement the settlement rate design. In addition, Northern requests that the demand portion of Northern's Canadian gas costs be reflected in the D-2 component of Northern's rates.

Northern requests waiver of all Commission rules and regulations as necessary to permit tariff sheets to be effective beginning of the gas day on October 1, 1986.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22931 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-171-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

October 6, 1986.

Take notice that on September 30, 1986, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, tendered for filing in Docket No. RP86-171-000 the following tariff sheets to its FERC Gas Tariff Original Volume No. 2:

Third Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 109
Third Revised Sheet No. 110
Original Revised Sheet No. 110A
Second Revised Sheet No. 114B
Second Revised Sheet No. 114C
Second Revised Sheet No. 114D
Second Revised Sheet No. 114E
Second Revised Sheet No. 114F
Second Revised Sheet No. 114G
First Revised Sheet No. 114H
First Revised Sheet No. 114I
Third Revised Sheet No. 123
Third Revised Sheet No. 150
Second Revised Sheet No. 158
Second Revised Sheet No. 159
Original Revised Sheet No. 159A
Third Revised Sheet No. 160
Third Revised Sheet No. 173
First Revised Sheet No. 173A
First Revised Sheet No. 173B
Second Revised Sheet No. 186A
Third Revised Sheet No. 200
Second Revised Sheet No. 201
Third Revised Sheet No. 207
Third Revised Sheet No. 208
Second Revised Sheet No. 209
Second Revised Sheet No. 213B
Second Revised Sheet No. 213C
Second Revised Sheet No. 213D
Second Revised Sheet No. 213E
Second Revised Sheet No. 213F
Second Revised Sheet No. 213G
First Revised Sheet No. 213H
First Revised Sheet No. 213I
Third Revised Sheet No. 221
Second Revised Sheet No. 250
Third Revised Sheet No. 258
Third Revised Sheet No. 259
Second Revised Sheet No. 272E
First Revised Sheet No. 272F
Second Revised Sheet No. 273
Third Revised Sheet No. 286

Northwest Alaskan states that it is submitting these sheets to reflect changes in the commodity charges and minimum volume requirements for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X-1 and Panhandle Eastern Pipe Line Company ("Panhandle") under Rate Schedule X-2.

Northwest Alaskan states that it is submitting the above tariff sheets pursuant to the provisions of the amended purchase agreements dated November 1, 1986, between Northwest Alaskan and Northern, and Northwest Alaskan and Panhandle.

Northwest Alaskan states that these tariff changes are beneficial to Northern and Panhandle in that the commodity charges for gas purchased will be reduced. Northern will also have greater flexibility in scheduling its daily minimum purchases during the months April-October. Panhandle will be able to nominate more Tier I gas daily.

Northwest Alaskan requests that the above sheets become effective November 1, 1986.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishng to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22932 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-557-000]

San Diego Gas & Electric Co.; Amendment to Filing

October 3, 1986.

Take notice that on August 11, 1986, San Diego Gas & Electric Company (SDG&E) tendered for filing in this docket revised cost information regarding SDG&E's San Onofre Nuclear Station (SONGS) Auxiliary Power Exchange Agreement between SDG&E and Southern California Edison Company (SCE). The filing provides clarification of the current rate/12 kv auxiliary distribution at SONGS and further information on the 12kv auxiliary distribution at SONGS, the exchange rate and the installed cost of facilities used in the SONGS 12 kv auxiliary service.

SDG&E states that copies of its filing have been mailed to SCE and to the California Public Utilities Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22933 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

Docket No. CI86-676-000, et al.]

Silverridge Corp., Inc., et al.; Applications for Abandonment

October 2, 1986.

Take notice that each of the Applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-676-000, B, Aug. 15, 1986 [1]	Silverridge Corp., Inc., 8101 N.W. 10th, Oklahoma City, Ok 73127.	Arkla Energy Resources, a division of Arkla, Inc. Kinta Field, Haskell, County, Oklahoma.	(2)	
CI86-714-000 (CI65-1363), B, Sept. 5, 1986 [3]	Exxon Corp., P.O. Box 2180, Houston, TX, 77252-2180.	Natural Gas Pipeline Co. of America, Tomball Field, Harris County, Texas.	(4)	
CI86-732-000, B, Sept. 17, 1986	Vernon E. Faulconer, P.O. Box 7995, Tyler, TX 75711.	United Gas Pipe Line Co., Sibley Field, Webster Parish, Louisiana.	(5)	
CI86-684-000, B, Aug. 18, 1986 [6]	Mewbourne Oil Co., *et al.* [7], P.O. Box 7698, Tyler, TX 75711.	Natural Gas Pipeline Co. Of America, Sombrero Field, Lea County, New Mexico.	(8)	

[1] Additional information received September 8, 1986.

[2] Applicant, a small producer certificate holder in Docket No. CS85-91-000, requests authorization to permanently abandon a sale of gas to Arkla. Applicant states that Arkla has agreed to release the subject well and surrounding acreage (Brooks-Hall Hightower Well #1, section 24, T8N, R21E, Haskell County, Oklahoma) since the well pressure cannot meet the line pressure in Arkla's transmission system. The line pressure varies from 480 psi to 570 psi. The well can deliver 150 Mcf/d at 480 psi but when the line pressure exceeds 550 psi the well will not deliver into the line in measureable quantities. Applicant states that Arkla does not desire the install compression since Arkla has determined to it be uneconomical. Applicant states that Arkla is not paying for gas not taken under their January 9, 1970, contract. The last effective rate was the NGPA section 104-minimum rate. On a vent test against a back pressure of 65 psi, the well stabilized at 767 Mcf/d. Applicant states that it proposes to sell the gas in the spot market, potentially to Vesta, Inc., or Arkla Release Gas, Inc.

[3] Additional information received September 12 and 18, 1986.

[4] Applicant requests authorization to permanently abandon a sale of gas to Natural covered under a gas purchase contract dated May 15, 1965, which expired December 1, 1985. The contract is on file with the Commission as Applicant's FERC Gs Rate Schedule No. 377 certificated in Docket No. CI65-1363. Applicant states it is subject to substantionally reduced takes without payment. By letter dated August 6, 1986, Natural informed Applicant that effective August 31, 1986, deliveries to Natural would cease and any deliveries on or after September 1, 1986, would be deemed to be Applicant's acceptance of the NGPA section 104 minimum rate for Applicant's gas. Applicant states that the classification and the deliverability of the wells are as follows:

NGPA section 104 classification	Deliverability
Flowing gas	1.4 MMcf/d
Replacement & recompletion gas	2.9
1973-74 biennium gas	0.7
Post 1974 gas	0.1
	5.1 MMcf/d

Applicant states that it currently has no alternate disposition for this gas.

[5] Applicant, a small producer certificate holder in Docket No. CS74-147, requests authorization to permanently abandon a sale of gas to United. Applicant states that United has ceased taking gas under their contract dated June 14, 1982, which is due to expire on July 1, 1990, and that United is not paying for gas not taken. Applicant states that the Grace B. Cook Gas Unit No. 1 qualifies for the NGPA section 106(a) rate, and that the total deliverability from the well is approximately 50 Mcf/day. Applicant states that it plans to perform production enhancement work on this well and to seek other meaningful markets for this gas.

[6] Additionaal information received September 24, 1986.

[7] *Et al.* parties are: Aaron Giebel, Kaiser-Francis Oil Company, Bluesky Oil & Gas, Inc., and Petromark Minerals, Inc.

[8] Applicant, a small producer certificate holder in Docket No. CS76-656, requests authorization to permanently abandon a sale of gas to Natural. Applicant states that the contract dated June 1, 1977, which had a primary term which expired August 23, 1982, continued in effect until Natural exercised the right, by letter dated September 19, 1985, to terminate the contract effective October 31, 1985. Applicant states that Natural has continued purchases of gas from the State "E" Com. Well No. 1 and has paid prices as implemented by the "market-out" and force majeure letters in effect from time to time. Applicant states that Natural recently advised Applicant that Natural could not commit to take, or pay for in lieu of taking, any gas from the well. Applicant states that the well is capable of a deliverability of approximately 300 Mcf per day, that the well is classified as NGPA section 104-Post 1974, and that Natural is not paying for gas not taken. Applicant states it anticipates entering into a new contract with Phillips 66 Natural Gas Company for sale of gas produced from this well.

Filling Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-2293 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-63-005]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Southern Natural Gas Company (Southern) on September 30, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2 and First Revised Volume No. 2A. Southern states that on March 31, 1986 it filed a general rate increase in Docket No. RP86-63-000 to become effective on May 1, 1986. By its order issued April 30, 1986, the Commission accepted the proposed tariff sheets for filing and suspended their effectiveness until October 1, 1986, subject to certain conditions. In compliance with the Commission's April 30, 1986 order, Southern's filing reflects (1) the elimination of all costs associated with facilities that will not be in service as of September 30, 1986 and (2) elimination of the Block II rate in Rate Schedules OCD and OCDL.

The filing also reflects the current level of purchased gas costs as included in Southern's Purchased Gas Adjustment (PGA) filing of August 29, 1986.

Southern requests that the proposed tariff sheets be allowed to be substituted for the tariff sheets previously suspended by the Commission's order of April 30, 1986, in Docket No. RP86-63-000 and June 30, 1986, in Docket No. RP86-114-000. Since the proposed tariff sheets contain the same costs included in Docket No. RP86-63-000, modified in accordance with the Commission's April 30, 1986 order in that docket, Southern requests the Commission to grant such waivers as may be necessary to allow the proposed tariff sheets to become effective October 1, 1986.

Copies of this filing were served upon Southern's jurisidictional customers, interested state public commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22935 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-50-000, 001]

Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

October 6, 1986.

Take notice that on September 30, 1986, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-fourth Revised Sheet No. 2A to Original Volume No. 1

Seventh Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on November 1, 1986 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed

changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22936 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-49-000, 001]

Williston Basin Interstate Pipeline Co., Purchased Gas Cost Adjustment Filing

October 6, 1986.

Williston Basin Interstate Pipeline Company (Williston Basin), on September 30, 1986, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1
First Revised Sheet Nos. 10–11
Alternate First Revised Sheet No. 10
Original Volume No. 1–A
Second Revised Sheet No. 275
First Revised Sheet No. 275A–275B
Second Revised Sheet Nos. 276–277
Original Volume No. 2
Fourth Revised Sheet Nos. 10–11
Alternate Fourth Revised Sheet Nos. 10–11

The proposed effective date of the tariff sheets is November 1, 1986.

Williston Basin states that the filing consists of two separate computations. First Revised Sheet Nos. 10 and 11 (First Revised Volume No. 1) and Fourth Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and the schedules in support thereof were computed in adherence to Williston Basin's PGA clause and the Commission's Rules and Regulations, except that "proxy" price levels are reflected in the current gas cost adjustment for those gas supply sources where contract amendments are being negotiated but are not yet signed. The use of such "proxy" pricing was allowed in Docket Nos. TA85-3-49-000, TA85-3-49-001, TA86-1-49-000, TA86-1-49-001 and TA86-2-49-000. the changes herein reflect a cumulative gas cost adjustment for Rate Schedules G-1, SGS-1, I-1 and X-1 of a negative 16.264 cents per dkt. The surcharge adjustment for Rate Schedules G-1, SGS-1 and I-1, which also reflects "proxy" pricing as allowed in the last PGA, is a negative 11.805 cents per dkt. These changes represent a net decrease in rates for Rate Schedules G-1, SGS-1 and I-1 of 25.090 cents per dkt and a net decrease of 7.115 cents per dkt for Rate Schedule X-1, from currently effective rates. Rate Schedule X-5 reflects a cumulative gas cost adjustment of a negative 16.501 cents per dkt, an increase of 3.889 cents per dkt.

Alternate First Revised Sheet No. 10 (First Revised Volume No. 1) and Alternate Fourth Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and supporting alternate schedules represent the results of calculations, pursuant to special and significant facts and circumstances, and the therefore warrant special Commission consideration. As such, Williston Basin has requested waivers to vary from normal PGA procedures. It is these alternate tariff sheets, along with First Revised Sheet No. 11 (First Revised Volume No. 1) which Williston Basin respectfully requests the Commission to accept as part of its FERC Gas Tariff. The changes contained herein reflect a cumulative gas cost adjustment for Rate Schedules G-1, SGS-1, I-1 and X-1 of a negative 24.290 cents per dkt. The surcharge is a negative 11.805 cents per dkt to Rate Schedules G-1, SGS-1 and I-1. These changes represent a net decrease in rates to Rate Schedules G-1, SGS-1 and I-1 of 33.116 cents per dkt, and a net reduction for Rate Schedule X-1 of 15.141 cents per dkt, from currently effective rates. Rate Schedule X-5 reflects a cumulative gas cost adjustment of a negative 35.955 cents per dkt, a decrease of 15.565 cents per dkt.

Williston Basin has also included, pursuant to § 154.41, Second Revised Sheet No. 275, First Revised Sheet Nos. 275A–275B and Second Revised Sheet Nos. 276–277, Original Volume No. 1–A, to update its "Index of Purchasers."

Any person desiring to heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22937 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Notice of Cases Filed for the Week of September 5 Through September 12, 1986

During the Week of September 5 through September 12, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

September 25, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 5 through Sept. 12, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 21, 1986	Joseph A. Imparato, Washington, D.C.	KRZ-0044	Interlocutory. If granted: Joseph J. Imparato would be dismissed as a party in the Proposed Remedial Order proceeding involving Houston Oil & Refining, Inc. (Case No. HRO-0245).
Sept. 8, 1986	Barnhill Bolt Company, Albuquerque, NM	KFA-0052	Appeal of an information request denial. If granted: The August 26, 1986, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Barnhill Bolt Company would receive access to the quoted prices of the awardee (Bosco Fastening Service Center) on Contract No. 60-8085.
Do.	Exxon Company, U.S.A., Washington, D.C.	KFA-0053	Appeal of an information request denial. If granted: The August 7, 1986, Freedom of Information Request Denial issued by the Office of Management and Information System of the Economic Regulatory Administration would be rescinded and Exxon Company, U.S.A. would receive access to information associatd with Ruling 1975-2, concerning application of the term "Class of Purchaser" under the former Petroleum Price Regulations.
Do.	Breen Oil Company, Inc., Bristol, CT	KEE-0070	Exception to the reporting requirements. If granted: Breen Oil Co., Inc. would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Sept. 9, 1986	Dodd's Wholesalers, Inc., Cut Bank, MT	KEE-0071	Exception to the reporting requirements. If granted: Dodd's Wholesalers, Inc. would no longer be required to file form EIA-782B "Reseller/Retailer's Monthly Petroleum Product Sales Report."
Do.	Ronald Couch, Belen, NM	KFA-0054	Appeal of an information request denial. If granted: The July 31, 1986, Freedom of Information Request Denial issued by the Office of Safeguards and Security, Defense Programs, would be rescinded and Ronald Couch would receive access to information regarding the First Super Computer, Princeton, New Jersey, 1930.
Sept. 10, 1986	Coline, Pennzoil, Perry Gas/New York, Albany, NY	RM2-36, RM10-37, RM183-38	Request for modification/rescission in the Coline, Pennzoil and Perry Gas Refund Proceedings. If granted: The June 6, 1986 Decision and Order (Case Nos. RQ2-283, RQ10-283 & RQ183-290) issued to New York would be modified regarding the state's application for refund submitted in the Coline, Pennzoil and Perry Gas refund proceedings.
Do.	Penberthy Electromelt International, Seattle, WA	KFA-0055	Appeal of an information request denial. If granted: The August 7, 1986, Freedom of Information Request Denial would be rescinded and the Penberthy Electromelt International would receive access to certain DOE information.
Sept. 12, 1986	Beacon Oil Company Hanford, CA	KFX-0022	Supplemental order. If granted: The February 7, 1986 Decision and Order (Case No. HEF-0203) implementing refund procedures in the Beacon Oil Company refund proceeding would be modified regarding the volumetric factor applied in the refund proceeding.

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/11/86	The Koger Co.	RF270-20
9/11/86	Eastern N.J./Walter Frykberg	RF232-421
9/10/86	Dorchester/Petroleum Trading & Transport Co.	RF253-4
9/10/86	Dorchester/Air Space Oil Co	RF253-5
9/10/86	Dorchester/Savage Gas Co. Inc	RF253-6
9/9/86	Dorchester/Phillips Petroleum Co.	RF253-3
9/8/86	Marine/Kerr-McGee Corp	RF257-6
9/11/86	Santa Maria Valley Railroad Company.	RF271-4
9/12/86	Blu-Gas Service, Inc.	RF270-27
9/12/86	Northeast/E.R. Warren Co. Inc.	RF214-3
9/8/86-9/12/86	Marathon Refund Applications	RF250-1255-RF250-1316
9/8/86-9/12/86	Mobil Refund Applications	RF225-10210-RF225-10237
9/8/86-9/12/86	Gulf Refund Applications	RF40-3362-RF40-3383
9/9/86	Crystal/Jack Chancellor	RF233-42
9/9/86	C.C. Dillon/Better Hill Texaco	RF148-8
9/8/86	Chattanoga Area Regional Transportation Authority.	RF272-2
9/8/86	Amoco/Southern Bell Tel. & Tel. Co.	RF21-12625
9/9/86	Lee Cartage Co.	RF270-19
9/10/86	Gulf/Benavidas Gulf	RF40-3375
9/10/86	Gulf/Sadieville Gulf	RF40-3374
9/10/86	Gulf/Hastings Gulf	RF40-3373
9/10/86	Gulf/Faldik Gulf	RF40-3372
9/10/86	Gulf/Ninth Street Gulf Service	RF40-3376
9/10/86	Gulf/Keels Service	RF40-3378
9/10/86	Gulf/Callese Gulf	RF40-3377
8/19/86	Oceana/Kimberly-Clark	RF243-3
9/11/86	Lester Fellows Co.	RF270-26
9/11/86	Lattavo Brothers, Inc.	RF270-35
9/11/86	H.J. Culler, Inc.	RF270-24
9/11/86	Yale Transportation Co	RF270-23
9/11/86	Munson Transportation	RF270-22
9/11/86	Inland Moving & Storage Co.	RF270-21
9/12/86	Conoco/Hunter Coal & Oil Co	RF220-397
9/12/86	Conoco/Essex Oil Company	RF220-398
9/12/86	Tenneco/Essex Oil Company	RF7-142
9/12/86	Apalachicola Northern Railroad Co.	RF271-5
9/12/86	International Transportation Service.	RF270-28
9/12/86	Dorchester/Mobil Oil Corp.	RF253-8
9/12/86	Dorchester/Chevron USA, Inc	RF253-7
9/8/86	Gulf/Guffman's Gulf Service	RF40-3362
9/8/86	Tenneco/Riverside Oil Co	RF7-140
9/8/86	Tenneco/Blackburn Service Co.	RF7-141
9/8/86	Northeast/Newport Electric Corp.	RF214-2
9/8/86	Dalco/Redigas, Inc.	RF248-4
9/10/86	Eastern N.J./Mediterranean Towers.	RF232-420
9/10/86	Amoco/Oglala Sioux Tribe	RQ21-325 RQ251-326
9/9/86	Gulf/Spear Oil Company	RF259-3
9/5/86	St. Mays Railroad Company	RF271-2
9/5/86	Beach Transportation Company	RF270-6
9/5/86	Forbes Refrigerated Transport, Inc.	RF270-7
9/5/86	Gulf/Rarick Coal & Oil Company.	RF40-3361
9/8/86	Gulf/Alps Tire Service	RF40-3371
9/8/86	Gulf/Holiday Gulf Service	RF40-3361
9/8/86	Gulf/Cockrun Gulf Service	RF40-3371
9/8/86	Gulf/Rickville Fuel Co	RF40-3370
9/8/86	Gulf/Adams Fuel Co	RF40-3368
9/8/86	Gulf/Willow Grove Lumber & Coal Co.	RF40-3369
9/8/86	Gulf/Seabord Service	RF40-3365
9/8/86	Gulf/Apgar Oil Co.	RF40-3364

[FR Doc. 86-22856 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders for the Week of August 4 Through August 8, 1986

During the week of August 4 through August 8, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 30, 1986.

Appeals

Richard L. Brewer, 8/4/86; KFA-0044

Richard L. Brewer filed an Appeal from a denial by the Director, Classification and Information Division, Albuquerque Operations Office, of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In that determination, the Director withheld an advance report of a security investigation of Brewer pursuant to Exemptions 5 and 7 of the FOIA (5 U.S.C. 552(b) (5) and (7)) because the investigation was incomplete. In considering the Appeal, the DOE found that

the premise cited for withholding the advance report, *i.e.*, that the investigation was on-going, no longer existed. The DOE therefore remanded the matter to the Director with directions to release the report or issue a determination which justifies the withholding of the report pursuant to an FOIA exemption. Accordingly, the Appeal was granted in part.

National Resources Defense Council, 8/4/86; KFA-0045

The National Resources Defense Council filed an Appeal from a denial by the Freedom of Information Authorizing Official of the Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents were properly withheld under Exemption 4 of the FOIA because they were part of proposals for cooperative agreements and no final awards had been made. Accordingly, the Appeal was denied.

Remedial Orders

Sabine Refining and Trading Company, Inc., Stuart Van Eman, Clyde Wilson, 8/8/86; HRO-0130

Sabine Refining and Trading Co., Inc., Stuart Van Eman and Clyde Wilson (Sabine) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration issued to the firm and its officers on February 1, 1983. In the PRO, the ERA found that, during the period from May through August 1980 (the audit period), Sabine violated § 212.186 of the DOE regulations by reselling crude oil at a markup without providing any service or other function traditionally and historically associated with the resale of crude oil. The ERA further concluded that this conduct also violated §§ 210.62(c) and 205.202 of the DOE regulations. Pursuant to this theory of liability, the ERA concluded that Sabine's overcharges totalled $3,834,341.26. As an alternative theory of liability, the ERA alleged that during the audit period, Sabine's prices exceeded those permitted pursuant to §§ 212.182 and 212.183. The DOE concluded that the PRO should be issued in final form. The important issues discussed in the Decision and Order include (i) the procedural and substantive validity of § 212.186, (ii) whether Sabine provided traditional and historical services or functions in its crude oil sales, and (iii) whether Wilson and Van Eman could be held personally liable for the overcharges set forth in the PRO.

Texaco Inc./Economic Regulatory Administration, 8/7/86; DRO-0198, HRZ-0233

Texaco Inc. (Texaco) filed a Statement of Objections to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the firm on May 1, 1979. In the PRO, ERA alleged that during the period September 1973 through December 1976, and thereafter until the issuance of the PRO, Texaco charged prices in excess of lawful price levels of domestically produced crude oil, as determined under the DOE regulations set forth at 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subpart D. In considering Texaco's objections to the PRO, DOE principally determined that (i) Texaco's general objections to DOE adjudication of the PRO should be denied; (ii) certain of Texaco's "property" determinations on its crude oil producing premises should be sustained on the basis of the original property definition and the severance tax accountability exception to the property definition; (iii) the stripper well property violations and other miscellaneous price violations alleged in the PRO should be sustained; and (iv) Texaco failed to show that the firm was entitled to any offsets of undercharges, or that the firm should not, as operator of the crude oil producing premises at issue in the PRO, be held liable for the full amount of overcharges. Accordingly, Texaco's Statement of Objections was granted in part and a final Remedial Order was issued to the firm in the amount of $235,484,738.37 plus interest. In addition, DOE denied a Motion to Accord No Weight filed by ERA in the proceeding, relating to certain evidence submitted by Texaco in support of its defenses to the PRO.

Thriftway Company, 8/7/86; HRO-0303

Thriftway Company (Thriftway) objected to a Proposed Remedial Order issued by the Economic Regulatory Administration alleging that during 1976 and 1977 the firm claimed small refiner bias (SRB) entitlements benefits for crude oil processed by another refiner pursuant to a processing agreement with Thriftway, thereby violating 10 CFR 211.67(e)(2). That regulation prohibits a small refiner from claiming SRB entitlements based on runs to stills where the crude oil was purchased from, and the resulting refined products were sold, directly or indirectly, to the processing refiner. DOE found that Thriftway directly or indirectly purchased the crude oil from, and sold the resulting refined product to, the processing refiner. Accordingly, the Proposed Remedial Order was issued as a final Remedial Order and Thriftway was directed to remit $670,923 plus interest to the DOE to compensate for its excess SRB entitlement benefits.

Motion for Discovery

Aweco, Inc./Billy K. Hargis, 8/5/86; HRD-0213

AWECO, Inc. and Billy K. Hargis (Respondents) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) issued to the Respondents on June 7, 1983. In the PRO, the ERA alleges that AWECO, Inc. and Mr. Hargis miscertified crude oil in certain transactions in violation of the provisions of 10 CFR 212.131, 210.62(c) and 205.202. The ERA also charges in the PRO that the Respondents violated the "anti-layering" provisions of 10 CFR Part 212, Subpart L, in various transactions. Finally, the ERA alleges that during a period prior to the effective date of 10 CFR Part 212, Subpart L, the Respondents engaged in a practice of inserting themselves between two other resellers and selling the crude oil at a substantial mark-up to their customers while performing no role in the production, distribution, or refining of the crude oil it purchased and sold. This activity, it is alleged, violated 10 CFR 205.202 and 210.62(c).

In their Motion for Discovery, the Respondents sought information regarding (1) the audit of AWECO, Inc., (2) the manner in which the DOE computed interest charges in the PRO, and (3) the DOE's contemporaneous construction of the layering and certification regulations. In considering the request, the DOE found that after the initiation of the proceeding, the ERA had provided the Respondents with the audit workpapers to which they are entitled under OHA precedent. The DOE further concluded that the ERA had provided the Respondents with more than sufficient information to enable them to fully understand the ERA's contentions regarding the computations of interest as set forth in the PRO. Finally, the DOE determined that the Respondents did not even attempt to substantiate their allegations that the layering and certification regulations were ambiguous or applied inconsistently by the agency. Accordingly, the DOE found no basis for granting contemporaneous construction discovery to the Respondents. For the above reasons, the DOE denied the Respondents' Motion for Discovery.

Implementation of Special Refund Procedures

Gull Industries, Inc., 8/4/86; HEF-0084, HEF-0085, HEF-0086

The DOE issued a Decision and Order implementing a plan for the distribution of $1,101,123.19 received as a result of two consent orders and one letter of agreement entered into between the DOE and Gull Industries, Inc. The DOE determined that each escrow account should be handled separately and therefore established three procedures whereby purchasers of Gull petroleum products may apply for refunds. In Case Nos. HEF-0084 and HEF-0086 the DOE identified the specific Gull customers and the amounts by which they were allegedly overcharged during those consent order periods. The specified refund amounts will be granted to those identified customers who establish that they were injured by Gull's alleged pricing practices. In Case No. HEF-0085 the escrow fund will be distributed to Gull customers who did not already receive a refund from Gull as restitution for the alleged overcharges in that proceeding. Refunds will be calculated by using a per gallon volumetric amount for gallon of petrolem product purchased during the consent order period. In all three proceedings, end-users or firms whose refund claims are below $5,000 will not be required to provide a detailed showing of injury. The Decision outlines the specific information to be included in each application.

Ramos Oil Company, Inc. and Farstad Oil Company, 8/7/86; HEF-0159, HEF-0567

The DOE issued a Decision and Order implementing a plan for the distribution of $21,818.84 and $67,623.34 received as a result of consent orders which the DOE entered into with Ramos Oil Company, Inc. (Ramos) and Farstad Oil Company (Farstad), respectively. The DOE determined that the respective settlement funds should be distributed to customers that purchased Ramos covered products during the period, August 20, 1973 through January 27, 1981, and Farstad

covered products November 1, 1973 and April 30, 1974. The specific information to be included in Applications for Refund is set forth in the Decision.

Supplemental Order

Stripper Well Exemption Litigation, 8/4/86; KCX-0020

Pursuant to the Settlement Agreement approved by the United States District Court for the District of Kansas, the Office of Hearings and Appeals ordered $104 million of alleged crude oil overcharges disbursed from the DOE Deposit Fund Escrow Account. Fifty-one million dollars were disbursed to state governments and $53 million were deposited to the account of the federal government.

Refund Applications

Belridge Oil Company/Chevron U.S.A., INC., 8/6/86; RF124-0001

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A., Inc. in the Belridge Oil Company special refund proceeding. Chevron had submitted a claim based on purchases of 929,772 gallons of product purchased from Belridge Oil Company, and its allocable share of the consent order funds was calculated to be $21,531. Chevron attempted to demonstrate injury by showing that Belridge's natural gasoline prices were higher than *Platt's* "low" prices adjusted downwards by 1.5¢. The DOE, however, could find no basis to assume that there had been a 1.5¢ differential between Belridge's propane and natural gasoline prices, particularly since *Platt's* "low" prices did not represent market average prices.

Instead, the DOE employed a three-step competitive disadvantage methodology that had been used in prior proceedings, and Chevron's the three measures of Chevron's range of competitive disadvantage were found to be $7,281 (the net excess cost), $7,713 (the gross excess cost), and $20,531 (the above market price volumetric share). Since two of the measures of Chevron's disadvantage were significantly lower than the others, the DOE found it appropriate to limit the firm's refund to $7,713, plus interest of $7,428.

Central Oil Company/Norton Center Garage, 8/8/86; RF209-3

The DOE issued a Decision and Order concerning an Application for Refund in the Central Oil Company special refund proceeding. The applicant, Norton Center Garage, was a reseller whose purchases of Central motor gasoline rendered it eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the applications under the standards specified in *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). The refund granted totals $7,643, representing $4,932 in principal and $2,711 in interest.

Conoco Inc./Yoder Oil Co., Inc. Et Al. 8/5/86; RF220-29 et al.

The DOE issued a Decision and Order concerning twenty-three Applications for Refund filed by Yoder Oil Co., Inc., *et al.* Each of the applicants had purchased refined petroleum products from Conoco Inc., and each sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the twenty-three firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the twenty-five firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $28,614.

Crystal Oil Company/Hi-Test Gas Station et al., 8/7/86; RF233-001 Et Al.

The DOE issued a Decision and Order granting 19 Applications for Refund from the Crystal Oil Company escrow account filed by 15 resellers and 4 end-users of Crystal refined petroleum products. All of the applicants elected to apply based on the presumptions of injury regarding small claims (under $5,000) set forth in *Crystal Oil Co.*, 13 DOE ¶ 85,381 (1985). The amount of refunds granted was $144,611, representing $83,008 in principal and $61,603 in interest.

Good Hope Refineries/Ashland Petroleum Company and Allied Oil Company, 8/8/86; RF189-19, RF189-20

The DOE issued a Decision and Order concerning two Applications for Refund filed by Ashland Petroleum Company and Allied Oil Company, a division of Ashland, on the basis of procedures outlined in *Good Hope Refineries*, 13 DOE ¶ 85,105 (1985). The DOE initially determined that Ashland was a spot purchaser of Good Hope product and, under the spot purchases presumption, should be presumed not to have been injured by alleged overcharges. Although Ashland attempted to rebut this presumption, it did not claim that its purchases from Good Hope were resold at a loss. Since over 90% of Ashland's purchases occurred in months when its current banks of unrecouped costs were negative, it appeared as if the firm actually passed through more costs than it incurred. The DOE also determined that Allied Oil Company had failed to show that it was either a regular customer, or that any spot purchases made were not to the firm's own advantage. Both Ashland and Allied thus failed to prove injury, and their applications were therefore denied.

Good Hope Refineries/Ship Service Corporation, 8/8/86; RF189-9

The DOE issued a Decision and Order concerning an Application for Refund filed by Ship Service Corporation. The firm had applied for a refund based on the procedures outlined in *Good Hope Refineries*, 13 DOE ¶85,105 (1985). Although Ship Service Corporation was a spot purchaser of middle distillates from Good Hope, it did not prove that its purchases were resold at a loss or that the purchases were for any other reason disadvantageous. The firm's additional claim that the purchases were made in order to gain a long-term contract from Good Hope was found to be irrelevant, because the firm did not claim to have suffered any loss due to those purchases. The DOE, therefore, denied Ship Service Corporation's application.

Marathon Petroleum Company/Green's Marathon, Et Al., 8/6/86; RF250-151 et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The total amount of the refunds granted in this Decision is $28,564, representing $27,643 in principal and $921 in interest.

Mobil Oil Corporation/Arndt Oil Company Et Al., 8/4/86; RF225-1042

The DOE issued a Decision granting 79 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). The DOE granted refunds totalling $20,193, representing $17,134 in principal and $3,059 interest.

Mobil Oil Corporation/Carolina Freight Carriers Corporation Et Al., 8/9/86; RF225-913 et al.

The Office of Hearings and Appeals granted 46 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applications were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. The total amount of the refunds granted was $8,077, representing $6,853 in principal and $1,224 interest.

Mobil Oil Corporation/Herbert W. Seiberg Et Al., 8/4/86; RF225-2336 Et Al.

The Department of Energy issued a Decision and Order granting refunds fromthe Mobil Oil Corporation deposit fund escrow account to 52 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption of injury outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted was $21,312 including accrued interests.

Mobil Oil Corporation/Jurgill's Service Station Et Al., 8/4/86; RF225-2792 et al.

The DOE issued a Decision granting 42 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.* 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $16,406, representing $13,916 in principal and $2,491 in interest.

Mobil Oil Corporation/Pelham Heights Service Station Et Al., 8/4/86; FR 225-39 et al.

The DOE issued a Decision granting 48 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers of Mobil motor gasoline. Each applicant elected to apply for a refund based upon the

presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $20,150 including accrued interest.

Mobil Oil Corporation/Robert L. Rhodes Et Al., 8/5/86; RF225-3312 et al.

The DOE issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 48 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,468, representing $16,510 in principal and $2,958 in interest.

Mobil Oil Corporation/Southbridge Tire Company Et Al., 8/7/86; RF225-5138 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 50 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,148, representing $16,240 in principal and $2,908 in interest.

Mobil Oil Corporation/Thomas Bell Jr., Et Al., 4/23/86; RF225-2856 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 45 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution percentage outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,450, representing $16,561 in principal and $2,889 in interest.

National Helium Corporation/District of Columbia and Standard Oil Company (Indiana)/District of Columbia, 8/5/86; RQ3-312, RQ251-313

The District of Columbia filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under Consent Orders with National Helium Corp. and Standard Oil Co. (Indiana). The District proposed to use the refund to supplement funds already approved for a Residential Conservation Service Program. This program will promote on-site home energy audits. The District also plans to supplement funds already approved for a Commercial Apartment and Conservation Service Program which will reduce energy use in apartments and small commercial buildings. The OHA concluded that the District's restitutionary plan would benefit consumers of motor gasoline. Accordingly, a refund of $110,243 was approved.

Northwest Pipeline Corporation Enterprise Products Company, 8/4/86; RF118-3

Enterprise Products Company (EPC) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation (Northwest). The DOE found that EPC had purchased commercial butane, normal butane and propane from Northwest during the consent order period and that EPC was injured by those purchases. Using a three-step competitive disadvantage methodology, the DOE calculated a range of EPC's competitive disadvantage. A refund of $73,770.74 was found to equitably compensate EPC for any injury experienced as a result of Northwest's alleged overcharges. In addition, the firm received accrued interest of $34,272.39, for a total refund of $108,044.13.

Pride Refining, Inc./L&L, Inc. Et Al., 8/5/86; RF235-1 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Pride Refining, Inc. special refund proceeding. Of the ten applicants, five were resellers and five were end-users of Pride product. Three of the five reseller-applicants claimed purchase volumes which entitled them to a refund below the $5,000 small claims threshold. The two other reseller-applicants were eligible to receive refunds of greater than $5,000 but elected to limit their claims to the threshold amount in lieu of making a detailed showing of injury. In addition, several of the applicants claimed refunds for volumes of product purchased after the decontrol date for the product. These claims were adjusted accordingly. In its Decision, the DOE granted the Applications under the standards specified in *Pride Refining, Inc.*, 13 DOE ¶ 85,367 (1986). The refunds granted total $70,729, representing $55,360 in principal and $15,099 in interest.

Pride Refining, Inc./McCormick & Sons Oil Co., Inc., Menard, Inc. and Gypsum Transport, Inc., 8/7/86; RF235-10, RF235-122, RF235-15.

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Pride Refining, Inc. special refund proceeding. One of the applicants was a reseller of Pride petroleum products who was below the $5,000 small claims threshold, and two of the applicants were end-users. In each case, the applicants claimed a refund for Pride products purchased after the decontrol date for the product. These claims were adjusted accordingly. In its Decision, the DOE granted the Applications under the standards specified in *Pride Refining, Inc.*, 13 DOE ¶ 85,367 (1986). The refunds granted total $1,105, representing $865 in principal and $240 in interest.

Quaker State Oil Refining Corporation/DAHL Oil Company, Inc., Et Al., 8/5/86; RF213-0015 et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed by resellers of Quaker State Oil Refining Corp. refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period and claimed a refund at or below the $5,000 small claims threshold level. According to the methodology set forth in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved totalled $76,439.

Standard Oil Company (Indiana)/Wyoming, Belridge Oil Company/Wyoming and Palo Pinto Oil and Gas/Wyoming, 8/8/86; RQ21-295, RQ8-296, RQ5-298

The State of Wyoming filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with Standard Oil Co. (Indiana) (Amoco), Belridge Oil Co. and Palo Pinto Oil and Gas. Wyoming proposed to use the refunds to fund traffic light synchronization in major Wyoming cities and fleet maintenance operations for public and private vehicle fleets. The OHA approved the fleet maintenance project for private fleets only and fully approved the traffic light synchronization project. The OHA concluded that Wyoming's proposed restitutionary plan would benefit consumers of motor gasoline who were injured by the alleged overcharges settled by the aforementioned consent orders. Accordingly, a refund of $127,677 was approved.

Wallace & Wallace Fuel Oil Company/Carib Oil Company, Inc., 8/5/86; RF69-3

The DOE issued a Decision and Order concerning an Application for Refund filed by Carib Oil Company, Inc., on the basis of procedures outlined in *Wallace and Wallace Fuel Oil Co.*, 12 DOE ¶ 85,122 (1984). Following a request by Carib, the DOE relied on evidence of volume purchases found in the Wallace audit file and determined that Carib's submission was sufficient. A refund of $7,763, representing $4,191 in principal and $3,572 interest, was therefore granted. However, Carib's predecessor, East 51st Street People's Fuel Oil, owed corporate taxes for the year 1981, and the IRS had filed a Notice of Lien claiming the refund. As outlined in Chapter 64 of the Internal Revenue Code, the refund amount due to Carib was therefore directed to the IRS in partial satisfaction of that lien.

Dismissals

The following submissions were dismissed:

Company Name	Case No.
Central Filling Station	RF225-3435, RF225-3436, and RF225-3437
Hoffman Oil Company	DRF40-3223
Keystone Amoco, Inc.	DRF21-12601
Lenawee Fuels, Inc.	DKEE-0059
Magness Mobil Service	DRF225-3642
Stallings Oil Company	DRF213-23
Sunflower Electric Cooperative, Inc.	DRF235-3
System Fuels, Inc.	DRF235-5
Vanguard Petroleum	DRF192-18

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BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $106,500 obtained as a result of consent orders which the DOE entered into with the following firms:

Ferrell Companies, Inc. of Liberty, Missouri.

Lakes Gas Company, Inc. of Forest Lakes, Minnesota.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the Ferrell or the Lakes consent order fund must be filed in duplicate within 90 days of publication of this notice in the **Federal Register**. Applications should refer to the appropriate case number, HEF-0587 for Ferrell, and HEF-0112 for Lakes. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jacqueline A. MacDonald, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $106,500, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with Ferrell Companies, Inc. and Lakes Gas Company, Inc. Ferrell and Lakes provided these funds to settle all claims and disputes with the DOE regarding the manner in which each firm applied the federal price regulations to its sales of propane. The Ferrell consent order covered the firm's propane sales between October 1, 1973, and January 27, 1981; the Lakes consent order covered the firm's propane sales between November 1, 1973, and February 29, 1980. Firms or individuals that purchased propane from Ferrell or Lakes during these time periods may be eligible to receive a portion of the consent order funds.

The DOE solicited comments concerning distribution of the consent order funds in two Proposed Decision and Orders, one for the Lakes case issued on February 7, 1986, and one for the Ferrell case issued on March 7, 1986. 51 FR 5,800 (February 18, 1986). 51 FR 9,255 (March 18, 1986). Following this, the DOE determined the final refund application procedures. As the Decision explains, the DOE audit of Lakes identified one individual who may be eligible for a refund. To receive a refund, this individual must submit either a schedule of its monthly purchases from Lakes, or a statement verifying that it purchased propane from Lakes and is willing to rely on the data in the audit files. The Decision also describes the process by which purchasers not identified in the DOE audits may apply for refunds. These unidentified purchasers must submit monthly schedules of their propane purchases from Ferrell or Lakes, and proof that they were injured by Ferrell's or Lakes' alleged pricing violations. Applicants claiming $5,000 or less need only document their purchase volumes.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days of the publication of this Decision and Order in the **Federal Register**.

Dated: September 30, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 30, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Ferrell Companies, Inc., Lakes Gas Company, Inc.

Dates of Filing: June 4, 1985, October 13, 1983.

Case Numbers: HEF-0587, HEF-0112.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Lakes Gas Company, Inc. (Lakes); on June 4, 1985, ERA filed a similar Petition regarding a consent order entered into with Ferrell Companies, Inc. (Ferrell).[1] This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to those consent orders.

I. Background

Ferrell is a "reseller-retailer" of covered products and Lakes is a "retailer" of propane as these terms were defined in 10 CFR 212.31. Ferrell is located in Liberty, Missouri; Lakes is located in Forest Lake, Minnesota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE.[2] The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. In addition, each consent order states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

In the Ferrell proceeding, the DOE audit alleged that between October 1, 1973 and January 27, 1981, the firm committed pricing violations in its sales of propane. (The audit involved only two of the corporation's subsidiaries: Ferrellgas, Inc. and Propane Industrial, Inc.) The Ferrell consent order, executed on December 12, 1984, settled all claims and disputes between Ferrell and the DOE regarding the firm's propane sales during the period covered by the audit. Under the terms of the consent order, Ferrell was required to deposit $100,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Ferrell remitted this sum on December 12, 1984.[3]

Likewise, the DOE audit of Lakes alleged that between November 1, 1973 and February 29, 1980, Lakes committed pricing violations in its sales of propane. The Lakes consent order, executed on April 17, 1980, settled all claims and disputes between Lakes and the DOE regarding the firm's propane sales during the period covered by the audit. The consent order required Lakes to refund $50,000 plus accrued interest to its customers. Through a series of price reductions, Lakes refunded all but $9,925. At that point, Lakes and the DOE negotiated a final settlement in which Lakes agreed to deposit $6,500 into an interest-bearing escrow account for ultimate distribution by the DOE. Lakes remitted this sum of June 11, 1981.[4]

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[1] The subsidiaries of Ferrell Companies, Inc., a Kansas corporation, are: Ferrell Companies, Inc., a Delaware corporation; Sentry Underground Storage Company; Indian Wells Oil Company; FCI, Inc.; Propane Industrial, Inc.; Ferrell Leasing Corporation; Indian Wells Production Company; Ferrell Securities, Inc.; One Liberty Plaza, Inc.; One Liberty Plaza Real Estate, Inc.; and Ferrellgas, Inc. For purposes of this proceeding, any reference to Ferrell includes its subsidiaries.

[2] The Ferrell consent order does not resolve the claims pending in Indian Wells Oil Company, Case No. HRO-0075, nor does it eliminate any liability Ferrell may have in that case based on any ownership interest which Ferrell may hold in Indian Wells.

[3] As of August 31, 1986, the total value of the Ferrell escrow account was $113,859, representing $100,000 in principal and $13,859 in accrued interest.

[4] As of August 31, 1986, the total value of the Lakes escrow account was $10,898, representing $6,500 in principal and $4,398 in accrued interest.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which OHA may use to formulate and implement a plan to distribute funds received as the result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority to fashion refund procedures, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

OHA issued Proposed Decisions and Orders (PD&Os) in the Lakes and Ferrell proceedings on February 7, 1986 and March 7, 1986, respectively. 51 FR 5,800 (February 18, 1986); 51 FR 9,255 (March 18, 1986). The PD&Os outline tentative plans for distributing refunds to parties that show that they were injured by the alleged overcharges in the firms' propane sales during the respective consent order periods. The PD&Os state that the basic purpose of a special refund proceeding is to make restitution for injuries experienced as a result of actual or alleged violations of the DOE regulations.

In order to notify all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&Os were sent to purchasers identified in the ERA audits and various petroleum dealers' associations. No comments were received regarding the Lakes case. However, comments were submitted in the Federal proceeding collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. At this time, we will not address comments regarding such second-stage refunds. Procedures for apportioning remaining monies will depend upon the size of the fund. *See Office of Enforcement*, 9 DOE at 85,055. Since we received no comments concerning the first stage procedures in either case, we will adopt them as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of the Ferrell and Lakes refund proceedings, we will distribute the funds in the escrow accounts to claimants that demonstrate that they were injured by the alleged overcharges.[5] To be eligible to receive a refund, a purchaser must file an application and, with the three exceptions discussed below, show the extent to which injury resulted from the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the monies in the appropriate consent order fund.[6]

As in previous special refund cases, we will adopt two rebuttable presumptions and two findings regarding injury. First, we will presume that purchasers of Ferrell or Lakes propane that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. In the absence of compelling material, we will also presume that spot purchasers were not injured. In addition, we find that end-users or ultimate consumers of Ferrell or Lakes propane whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Ferrell or Lakes propane and passed the alleged overcharges associated with that product through to their end-user members. These presumptions and findings permit claimants to apply for refunds without incurring prohibitively high expenses. Prior OHA decisions explain additional reasons for adopting these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&Os. 51 FR 9,255 at 9,256–57 (March 18, 1986); 51 FR 5,800 at 5,801–02 (February 18, 1986).

Since all of Lakes' customers are end-users or ultimate consumers, and since the Lakes escrow amount is small, Lakes' customers need not include detailed proof of injury in their refund applications.

In the Ferrell case, however, a reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury.[7] While there are a variety of methods for making such a showing a claimant is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.

IV. Calculation of Refund Amounts

In both the Ferrell and Lakes proceedings we will use a volumetric method to compute the refunds to eligible applicants. This method presumes that the alleged overcharges in each case were spread equally over all the gallons of propane covered by the respective consent orders. Under the volumetric method, a claimant will be eligible for a refund equal to the number of gallons of Ferrell or Lakes propane that it purchased during the consent order period times the appropriate volumetric factor. Successful claimants will also receive a proportionate share of the interest that has accrued on the appropriate escrow account. The volumetric factor, or average per gallon refund, equals $0.000153 in the Ferrell case and $0.00141 in the Lakes proceeding.[8] A claimant may not receive a refund based upon volumes for which Ferrell or Lakes has already made restitution, whether through price rollbacks or direct payments.

We recognize that a particular purchaser could have absorbed a disproportionate share of the alleged overcharges. Any purchaser which can make such a showing may file a refund application based on such a claim.

As in previous cases, we will process only claims for at least $15. We have found in the past that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims in either of the two proceedings exceed the funds available in the particular escrow account, all refunds in that proceeding will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

V. Applications for Refund

Through the procedures described above, we will be able to distribute the Ferrell and Lakes consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased Ferrell propane during the period October 1, 1973, through January 27, 1981, or Lakes propane between November 1, 1973, and February 29, 1980. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Ferrell or Lakes propane during the appropriate consent order period along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the

[5] In its audit of Lakes, the DOE identified one allegedly overcharged first purchaser—Mr. Thurnbeck of Forest Lake, Minnesota. Based on the information contained in the audit files, he is entitled to 1.955 percent of the settlement, which equals $127, plus accrued interest.

[6] On December 26, 1974, Ferrell signed and Accord and Satisfaction with the FEA regarding alleged overcharges on Ferrell's propane sales to Lyons Diecasting, a wholesale customer of Ferrellgas, Inc. Ferrell remitted $12,500 to the FEA to settle this dispute. Lyons Diecasting will therefore be precluded from receiving a refund in this proceeding.

[7] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,122 (1982) (Ada).

[8] The Ferrell volumetric is computed by dividing the $100,000 escrow principal amount, plus the $12,500 already refunded to Lyons Diecasting, by the 733,366,000 gallons of propane that Ferrell sold during the consent order period. The Lakes volumetric is calculated by dividing the $50,000 original consent order settlement by the estimated 35,500,000 gallons of propane that Lakes sold during the consent order period.

In both calculations, the dollar value of the dividend includes Ferrell's and Lakes' direct and price rollback refunds, as well as the appropriate escrow amounts. This modified method of calculating the volumetrics is appropriate since volumes for which refunds were already paid may not form the basis for a refund in this proceeding. *See* Beacon Oil Company, 14 DOE ¶____, No. KFX-0022 (September 26, 1986).

propane was originally sold by Ferrell or Lakes;

(2) whether the applicant has previously received a refund, directly or through price rollbacks, with respect to the alleged overcharges identified in the ERA audit underlying the proceeding in which it is claiming a refund;

(3) whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating the they do not claim a refund;

(4) whether the applicant is or has been involved as a party in any DOE enforcement proceedings of private actions filed under 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) the name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the appropriate case number (HEF-0587 for Ferrell or HEF-0112 for Lakes) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds submitted to Department of Energy by Ferrell Companies, Inc. pursuant to the Consent Order executed on December 12, 1984, may now be filed.

(2) Applications for Refund from the funds remitted to Department of Energy by Lakes Gas Company, Inc. pursuant to the Consent Order executed on April 17, 1980, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office Hearings and Appeals.

Dated: September 30, 1985.

[FR Doc. 86-22858 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $100,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to a consent order involving Amber Refining Inc. (formerly Winston Refining Company), a refiner located in Forth Worth, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number HEF-0589.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Winston Refining Company (Winston) of Forth Worth, Texas, which settled possible pricing violations in the firm's sales of covered petroleum products during the period August 19, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Winston and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to other consent order funds.

Applications for Refund should not be filed at this time. Apropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth in the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

October 2, 1986.

Name of Firm: Winston Refining Company.

Date of Filing: July 19, 1985.

Case Number: HEF-0589.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) of the DOE may petition the Office of Hearings and Appeals (OHA) to formulate and implement special refund procedures in order to remedy the effect of alleged violations of the DOE price and allocation regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on July 19, 1985 requesting that OHA establish special refund procedures for the distribution of monies received pursuant to a consent order entered into by the DOE and Winston Refining Co. (Winston) of Fort Worth, Texas.[1]

I. Background

Winston is a "refiner" of crude oil as that term was defined in 10 CFR 212.31. During the relevant time period, Winston was subject to the Mandatory Petroleum Price Regulations, and specifically to the refiner price rule provisions of 10 CFR Part 212, Subpart E. An ERA audit of Winston's business records uncovered probable violations of the price regulations with respect to Winston's sales of refined petroleum products during the period from August 19, 1973 through January 27, 1981 (the audit period). In order to settle all claims and disputes between Winston and the DOE regarding Winston's compliance with DOE price regulations in sales of covered products during the audit period (hereinafter referred to as the consent order period), the DOE and Winston entered into a consent order, effective December 30, 1983, in which Winston agreed to pay $100,000 to the DOE.[2]

[1] References in this proceeding to Winston Refining Company also refer to Amber Refining, Inc. and Fort Worth Refining Co. (Winston's successor and predecessor firms, respectively).

[2] The consent order does not apply to Winston's compliance with the DOE allocation regulations, including the Crude Oil Entitlements Program.

According to the ERA's July 19 Petition, Winston has complied with the terms of the consent order. The $100,000 paid by Winston is currently being held by the U.S. Treasury in an interest-bearing escrow account pending distribution by the DOE.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds where appropriate. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶82,553 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Winston consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

We propose to establish a claims procedure whereby claimants who demonstrate that they were injured as a result of Winston's pricing practices during the consent order period will be eligible to receive a refund.[3]

A. *Showing of Injury*. We propose that claimants who resold petroleum products purchased from Winston be required to demonstrate that they did not pass on to their customers the price increases implemented by Winston. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers and refiners) must show that it would have maintained its prices for the product purchased from Winston at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased covered products from Winston, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶85,168 (1985); *Texaco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its prices.[4] The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶85,014 (1982).

B. *Applicants Claiming a Refund of $5,000 or Less*. In the prsent case, we propose to adopt a presumption of injury which has been used in many previous special refund cases. We will presume tha reseller applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of petroleum products from Winston. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶85,116 (1984); *Marion Corp.*, 12 DOE ¶85,114 (1984); (Marion). We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[5]

C. Spot Purchasers

We further propose that resellers who made spot purchases from Winston be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Winston petroleum products at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, a firm which made only spot purchases from Winston will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchase(s) from Winston. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶85,170 (1986).

D. End-users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Winston's covered products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Winston's covered products for consumption as fuel will not be considered end-users for the purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶85,188 (1985).

E. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all of the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers*. The per gallon volumetric factor is equal to the consent order amount divided by the total volume of covered products which Winston sold during the consent order period.[6] In this case, the

[3] Information in the Winston audit file indicates that three Winston customers, McLean Trucking Company, E-Z Serve Inc., and Energy Specialist, Inc., are firms which had corporate affiliations with Winston. On the basis of this information, we believe it is appropriate to establish a rebuttable presumption that these firms were not injured by Winston's alleged overcharges and therefore should receive no refund in this proceeding. *See Warren Holding Co./Puritan Oil Co.*, 13 DOE ¶85,337 (1985). Similarly, we also propose that Basin Products, Inc., a firm which served as Winston's sales agent during portions of the consent order period, should be excluded from participation in this proceeding. A list of other Winston customers identified in the audit file is attached as an Appendix.

[4] Some of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendments of the reseller/retailer price rule that eliminated the bank requirement for retailers and most resellers. *See* 10 CFR 212.93(a)(2), 44 FR. 42542 (July 19, 1979) (effective July 15, 1979); 45 FR. 29546 (May 2, 1980) (effective May 1, 1980). Accordingly, retailers and most resellers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979 and May 1, 1980, respectively.

[5] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

[6] The volumetric method, which attributes injury on a uniform basis to each gallon of covered product sold, recognizes that the computation of specific overcharges in individual transactions is extremely difficult. In any event the consent order was intended to resolve the DOE allegations by

Continued

volumetric factor equals $0.00013 ($100,000 divided by 769,031,896 gallons). Refunds will be calculated by multiplying the volumetric factor by the total volume of the covered products purchased by the applicant during the consent order period deemed eligible for refunds. The interest that has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15 for first step claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Winston proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Winston Consent Order, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Winston Refining Company pursuant to the Consent Order executed on December 30, 1983, will be distributed in accordance with the foregoing Decision.

Appendix

Alvarado Oil Company
Advance Petroleum Dist. Co.
Alkek Oil Corporation
Astro Gas & Oil, Inc.
D. W. Ball Oil Company
B & B Petroleum Products
Bob-O-Link Oil Company
Bolivar Oil Company
J.H. Briscoe Oil Company
James Browder Oil Company
Marvin Browder Oil Company
R.E. Buckley Oil Co., Inc.
Carroll & Perkins Oil Co.
Christopher Oil Company
Caruthers Oil Co.
Cleburne Oil Co.
County Line Service Station
Dee and Dee Oil Co.
East Texas Petroleum, Inc.
Dixie Petroleum Company
Enderby Gas Company
Erwin Oil Company
Enterprise Products Inc.
Felts Distributing Company
Foremost Petroleum Co. Inc.
Forth Worth Butane Gas Co.
General Fuel Oil Co.
W.L. Gipson
Guthrie Oil Company
Gas House Company
Stratoflex Inc.
Hampton Molasses Company
Hampton Oil Co.
H-M-M Distributing Corp.
Bob Hams Oil Company
Coastal Transport Co., Inc.
Home Petroleum Corporation
Hi-Low Corporation
Tauber Oil Company
Barney Holland Oil Co.
Hollis Distributing Company
Independent Oil Company
Industrial Fuels, Inc.
J-Mc Oil Company
Krum Oil Company
Kemp Oil Company
Lone Star Gas Company
Paul Little Distributing
M&A Petroleum Company
Jack Long
Magic City Petroleum Co., Inc.
Marco Distributors
Michener Oil Co.
M & M Oil Co.
Nu-Way Oil Company
Oils Unlimited
Petroleum Industries, Inc.
Petroleum Products Dist.
Pioneer Oil Company
Powell Grain & Gin Co.
Quality Oil Company
Ed Prather
Red Hat Oil Company
C.B. Rogers, Jr.
Paul Rogers
Sanger Oil Company
Sello Petroleum Co.
Southwest Oil & Gas Co.
Solvent Specialty Co.
Spindor Bros. Tire Co.
Supreme Oil Dist. Co.
Teague Oil Company
Thomas Oil Distributing Company
Thrift Oil Company
Thrift Mart, Inc.
Thunderbird Petroleum Company
United Petroleum Company
Union Texas Petroleum
Western Commercial Transport
Astro, Inc.
Permian Corporation
V.A. Hospital (Dallas)
General Fuel Oil Company
Southern Asphalt Company
Texas Creosote Company
Dallas Power & Light Co.
Texas Electric Service Company
Wright Asphalt Company
Trumbull Asphalt Co.
H.L. Gage
L.P.G., Inc.
Pride Refining, Inc.
Longview Refining Company
Crystal Oil Co.
Wood County Refining Co.
Tenneco Oil Co.
Triangle Refineries, Inc.
Vickers Petroleum Company
Sun Oil Company
Humble Oil and Refining Co.
Mobil Oil Corporation
M.K.T. Railroad
C.R.I.&P. Railroad
A.T.&S.F. Railroad
Fort Worth Petroleum Prod. Corp.
Carswell A.F.B.
Exxon Corporation
General Dynamics
Naval Air Station (Grand Prairie)
Continental Oil Company
Grand Forks A.F.B.
Southwest Airmotive
Bell Oil & Gas Co.
Barksdale A.F.B.
H.T. Dodson
Fort Hood
Fort Walters
Sheppard A.F.B.
Biggs Field
Vance A.F.B.
Bob Harris Oil Co.

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means of a negotiated settlement. A continuation of the attempt to establish specific overcharge amounts would therefore be contrary to the purposes of the consent order. Since the volumetric method places all refund claimants on an equal footing and is relatively easy to administer, previous special refund Decisions have concluded that it is equitable, efficient, and the best general method of distributing refund monies. *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,198-99 (1982).

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $450,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and UPG, Inc. (formerly known as P&O Falco, Inc.) The funds will be distributed to refund applicants who purchased products other than crude oil from Falco during the settlement period (August 1, 1973 through January 27, 1981).

DATE AND ADDRESS: Applications for refund must be filed in duplicate by February 1, 1987 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should display a conspicous reference to Case Number KEF-0026.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585 (202) 252-2390 (Wieker) or (202) 252-2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the

Decision and Order set out below. The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute monies obtained from UPG, Inc. (UPG) formerly known as P&O Falco, Inc. (Falco). UPG entered into a Consent Order to settle disputes regarding Falco's compliance with the federal petroleum price and allocation regulations during the period August 1, 1973 through January 27, 1981. Under the terms of the Consent Order, UPG remitted $450,000.00 which is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that the UPG-Falco settlement fund will be distributed through a two-stage refund proceeding. The first stage will refund monies to customers who purchased Falco products Falco products during the settlement period. The specific requirements which an applicant must meet in order to receive a refund vary depending on a number of factors (e.g., the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain). These specific requirements are set out in section II of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons which they purchased from Falco. After meritorious claims are paid in the first stage, second stage refund procedures may become necessary to distribute any remaining funds.

Applications for refund may now be filed. Applications will be accepted provided they are filed at the address set forth at the beginning of this notice no later than February 1, 1987. Additional information is provided in the Decision and Order.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 1, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: UPG, Inc. (Formerly Known as P&O Falco, Inc.)
Date of Filing: April 3, 1986
Case Number: KEF-0026

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations. On April 3, 1986 the ERA requested that the OHA formulate and implement procedures to distribute $450,000 which it received pursuant to a settlement with UPG, Inc. (UPG), formerly known as P&O Falco, Inc. (Falco).

This decision contains the OHA's plan for distributing the UPG/Falco settlement fund. Of special interest to potential refund applicants is Section II which explains the proposed requirements for refund eligibility. Since the specific requirements which an applicant must meet will vary depending on a number of factors (e.g., the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain), we have set out the specific requirements applicable to each type of applicant in Section II (A). A claimant should take note of those requirements applicable to its particular circumstances. These specific requirements are followed in Section II (B) by a discussion of general requirements applicable to all UPG refund applicants.

I. Background

UPG, a Delaware corporation, is the corporate successor of Falco, a company whose operations were centered in Louisiana. During the period covered by the settlement (August 1, 1973 through January 27, 1981), Falco refined crude oil and resold crude oil and covered products. Therefore, Falco was subject to the federal petroleum price and allocation regulations.

The ERA and UPG entered into a Consent Order on December 21, 1985, resolving all pending and potential disputes concerning Falco's compliance with the applicable DOE regulations. Pursuant to the Consent Order UPG has paid $450,000 to the DOE. These monies have been deposited in an interest-bearing escrow account pending ultimate disposition by the DOE.

On July 3, 1986 the OHA issued a Proposed Decision and Order setting forth a tentative plan for distributing the UPG/Falco settlement fund. 51 FR 25397 (July 14, 1986). The Proposed Decision noted that although, on its face, the UPG Consent Order purports to settle disputes regarding Falco's sales of both crude oil and refined products, the DOE audit files support a finding that the entire Consent Order amount is attributable to Falco's sales of refined products only.[1]

Therefore, we proposed to treat the entire settlement amount as monies obtained to settle non-crude oil overcharges.

To distribute these settlement monies, we proposed to use a two-stage process. During the first stage we proposed to distribute funds to identifiable purchasers of Falco products who could demonstrate that they were injured by the firm's pricing practices during the settlement period. We stated that if funds remain after the first stage is completed, a second-stage refund procedure may become necessary.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments to the proposed refund procedures were solicited. Comments were filed on behalf of the States of Arkansas, Delaware, Iowa, North Dakota, Rhode Island, Utah, West Virginia, and Pennsylvania concerning the distribution of any funds remaining after refunds have been made to identifiable parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the UPG/Falco refund proceeding. The procedure used to distribute any monies remaining after this first stage will necessarily depend on the size of the fund. Therefore, it would be premature for us to address the States' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

II. Refund Procedures

This Section of our Decision will outline the presumptions which we are adopting and the showing which each type of refund applicant must make in order to receive a refund. The general presumptions we are adopting are set out in Subsection (A). The filing requirements specific to each type of applicant appear in Subsection (B). The general requirements of all applicants are contained in Subsection (C).

(A) Presumptions. In this refund proceeding, we will adopt certain pesumptions which will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider the refund applications in the most efficient manner possible. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Falco's sales of refined products during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *American Pacific International*, 14 DOE ¶ 85,158 at 88,293 (1986).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund amount, plus accrued interest. In the present case, we have set the per gallon refund amount at $0.0027 per gallon. We derived this figure by dividing the settlement amount ($450,000) by an estimate of the number of gallons of refined products which Falco sold during the settlement period

[1] The DOE audit file indicates that the $450,000 refund amount obtained from the UPG settlement negotiations resulted from Falco's alleged overcharges for refined products and not from Falco's crude oil activities. Telephone conversation between Irene Bleiweiss, Staff Attorney, Office of Hearings and Appeals and Terry Pate, ERA Houston (June 19, 1986). Memorandum to Settlement File from Sandra K. Webb, Director, ERA Houston (December 20, 1985).

When consent orders cover both crude oil and refined products we generally divide the settlement amount into separate crude oil and non-crude oil refund pools. *E.g., True Oil Co.*, 13 DOE ¶85,178 (1985). However, in light of the facts above we believe it is appropriate to allocate the entire settlement amount to a single non-crude oil refund pool.

(164,290,822.77) However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

We also will adopt a number of presumptions concerning injury. These presumptions will excuse certain categories of refund applicants from providing that they were injured by Falco's pricing practices, thus enabling certain applicants to simplify their refund applications. We will discuss these presumptions and the showing which each type of applicant must make in Section II(B) below.

(B) Specitic Application Requirements for Each Category of Refund Applicant. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) end-users, e.g., trucking companies that purchased diesel fuel for their own use; (2) regulated non-petroleum entities which used Falco products in their businesses (e.g., public utilities or cooperatives which sold Falco products to their members); and (3) refiners, resellers, or retailers who resold Falco products. The Appendix to this Decision lists customers who purchased diesel fuel, fuel oil, motor gasoline and kerosene from Falco during the settlement period. It is possible that there are additional potential refund applicants.

(1) Refund Applications of End-Users. We will adopt a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Falco's pricing practices. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore end-users of Falco products need only document that they were ultimate consumers of a specific amount of Falco products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms. We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury in this case. Although such firms, *e.g.*, public utilities and agricultural cooperatives, generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Falco products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners—a. Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less. We will adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Falco's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Falco products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

b. Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000. Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Falco.

(C) General Refund Application Requirements. In addition to the specific requirements outlined above, all applicants must meet a number of general requirements in order to receive a refund. Every applicant must file a written application for refund, signed by the applicant. The application must make reference to the UPG/Falco Special Refund Proceeding (Case No. KEF-0026). Each applicant must submit a monthly purchase schedule for each product purchased from Falco during the settlement period (August 1, 1973 through January 27, 1981).

Firms which made indirect purchases of Falco products may also apply for refunds. If an applicant did not purchase directly from Falco but believes that products it purchased from another firm originated with Falco, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Falco products passed through Falso's alleged overcharges to its own customers.

We will establish a rebuttable presumption that claimants who made only spot purchases from Falco were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and generally would not have made spot market purchases from Falco at increased prices unless they were able to pass through the full amount of the selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from Falco will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchases from Falco.

Each refund applicant should furnish us with the name, position or title, and telephone number of a person whom we may contact for additional information. If the applicant is affiliated or associated with Falco or UPG in any manner, it must so indicate and provide information explaining the nature of its relationship with the firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase from Falco, but is a successor to a Falco customer, the applicant must provide evidence establishing that it, rather than Falco's former customer, is entitled to a refund. Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief.

All applications must be filed in duplicate and must be filed by February 1, 1987. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must indicate this belief and submit two additional copies of its application from which the information has been deleted. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by UPG, Inc. (formerly known as P&O Falco, Inc.) pursuant to the Consent Order executed on December 21, 1985 may now be filed.

(2) All applications must be filed no later than February 1, 1987.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Identified Customers of P & O Falco

Diesel and Gasoline Customers

A. L. Moore
A. L. Moore, Jr.
Abney Oil Co.

Arkla Chemical
Bailey's Parade Service Station
Berwick Bay Transportation Co.
Bird & Son, Inc.
C. C. Pate
C. J. Thibodeaux
Cager Distributors, Inc.
Central Oil & Supply Co.
Champlin Petroleum Co.
City of Minden
Continental Dredging Co.
Crowson Farms
Curtis Allen
Curtis D. Allen Exxon Dist.
E.H. Gleason
E. Z. Mart Stores
Eager Distributors
Eager Oil Co.
Emerson Oil Co. Inc.
Engineered Property Management
Geroge Bailey
Gleason Oil Co.
H&H Oil Co.
Haynes Exxon Dist.
Herbert Gleason
Hicks Post Co.
Hubert Gleason
J.L. Guice
James A. Crowson
Kellogg/Moore Oil Co.
Kelly's Truck Stop
Kelly's Truck Terminal
Kwik Serv
LeBeouf Bros. Towing Co.
Lone Star Steel Co.
M.P.M. Oil, Inc.
Maller Oil Co.
Matthews Oil Co.
McCartney Oil Co., Inc.
Melton Truck Lines
Monroe Phillips 66 Oil Co.
Moore Farms
Moran Fuels Corp.
N.E. La. Wholesale Oil & Gas
Oil Well Service Co.
Pate Oil Co.
Pellets, Inc.
Pierremont, Inc.
Pineville Kraft Corp.
Randall Breaux Tire Co.
Richard Ayers
Rose Oil
Sledge Oil Co.
So. La. Production Co., Inc.
Southern Marketing
Southwestern Electric Power Co.
St. Joe Oil Co.
Sunco, Inc.
Swepco
Systems Fuels, Inc.
Tensas Oil Co.
Thibodeaux Co.
Triangle Refineries, Inc.
Trident Petroleum Co.
Universal Oil Products
Waterproof Products, Inc.
Waymon Hornbeck
Webster Transportation
West Port TruckStop
Wurster Oil Co., Inc.

Fuel Oil/Kerosene Customers

Arkansas Power & Light
Arkla Chemical Corp.
Atlas Processing Co.
Champlin Pet. Co.
Exxon Co. U.S.A.
International Paper
J&W Refining
Lone Star Steel
Nikoosa Edwards Paper Co.
Triangle

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BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of funds obtained as a result of a Consent Order which the DOE entered into with Cloyce K. Box.

DATE AND ADDRESS: Applications for refund of a portion of the Box consent order fund must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Cloyce K. Box Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number HEF-0041.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by Cloyce K. Box which settled possible pricing violations in sales of OKC Corporation motor gasoline made on behalf of Box by J.R. Adams Oil Company of Guymon, Oklahoma, during the period April 2, 1974 through July 30, 1974, or by Ritco, Inc. of Waco, Texas, between March 21, 1974 and June 13, 1974.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Box consent order funds was issued on June 9, 1986. 51 FR 22338 (June 19, 1986).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by parties which purchased OKC Corporation motor gasoline from Adams and/or Ritco during the relevant time periods. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an application for refund is set forth in the Decision and Order.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Apeals.

Decision and Order of the Department of Energy

Special Refund Procedures

October 1, 1986.

Name of Firm: Cloyce K. Box.

Date of Filing: October 13, 1983.

Case Number: HEF-0041.

The Economic Regulatory Administration (ERA) filed a petition on October 13, 1983, requesting that the Office of Hearings and Appeals (OHA) implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Cloyce K. Box (Box), formerly President of OKC Corporation (OKC). This Consent Order is independent of a separate Consent Order with OKC itself which has been the subject of a separate Subpart V proceeding. *See Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,551 (1982) (*OKC*).

I. Background

According to the record in this proceeding and the related *OKC* proceeding (Case No. BEF-0032), during the period of federal petroleum price controls, Box entered into business arrangements with a number of independent brokers (the so-called "friendly brokers") under which Box arranged for the brokers to purchase refined petroleum products from OKC. The friendly brokers then resold the products at excessive prices in violation of the DOE price regulations, and split the profits with Box. Box Consent Order ¶¶ 1-3; *OKC*, 9 DOE at 85,270. In order to settle all claims and disputes between Box and the DOE regarding these transactions in 1974, Box and the DOE entered into a Consent Order on July 17, 1980, in which Box agreed to remit $505,000 to the DOE, of which $500,000 was for the purpose of restitution to injured parties and $5,000 was a civil penalty. On the same date, Box entered into a Memorandum of Understanding which resolved all DOE-related criminal allegations against Box in return for his pleading guilty to a 23-count information charging him with aiding and abetting violations of 10 CFR 210.62(c), in violation of section 5(a) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(3)(B)(ii).[1] The Consent Order

[1] *United States* v. *Cloyce K. Box*, Cr. No. 80-107W (W.D. Okla. July 17, 1980). Box paid a fine of $5,000 per count or a total fine of $115,000. Box's guilty plea was entered pursuant to the standards of *North Carolina* v. *Alford*, 400 U.S. 25 (1970), which permit a court to accept a guilty plea from a person accused of a crime despite that person's unwillingness to admit to participation in the acts constituting the crime.

states that it does not constitute an admission by Box of any civil or criminal liability, or of any wrongdoing or illegal act. ¶ 7. In accordance with the terms of the Consent Order, Box remitted to the DOE $500,000, which is currently being held in an interest-bearing escrow account pending distribution by the DOE. The civil penalty of $5,000 was deposited into the miscellaneous receipts account of the United States Treasury.

On June 9, 1986, we issued a Proposed Decision and Order in which we determined that it was appropriate to establish a special refund proceeding with respect to the Box consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute refunds to parties which could demonstrate that they were injured by the pricing practices of two firms which sold motor gasoline on Box's behalf during specific time periods. Specifically, we proposed to disburse funds in the first stage of the proceeding to claimants who purchased motor gasoline from J.R. Adams of Guymon, Oklahoma, d/b/a J.R. Adams Oil Company (Adams), during the period from April 2, 1974 through July 30, 1974, and from Edwin W. Gummelt, Jr., and Robert A. Whitley, of Waco, Texas, together d/b/a Ritco, Inc. (Ritco), during the period March 21, 1974 through June 13, 1974. We also stated that funds remaining after payment of refunds to eligible claimants in the first stage would be distributed during a second stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage. The Proposed Decision was published in the Federal Register on June 19, 1986 (51 FR 22338), and comments on the proposed refund mechanism were due to be submitted within 30 days of that date. Comments were received from the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia. These comments requested that any monies remaining in the Box settlement fund after refunds are made to Box customers which filed meritorious claims be distributed to these states for use in energy-related projects. No comments were received which addressed the proposed mechanics of the first-stage refund process itself.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Box refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline sold by Ritco and/or Adams during the specified time periods should submit in order to establish eligibility for a portion of the consent order funds. We will not, however, determine procedures for the second stage of the refund proceeding in this Decision. This determination will necessarily depend on the size of the residual fund, among other factors. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

II. *Jurisdiction and Authority*

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).*

III. *Refund Procedures*

A. *Refund Claimants.* In the first stage, refund monies shall be distributed to those firms who were injured as a result of the 23 transactions specified in the criminal information that was settled by the Memorandum of Understanding. Twenty of these transactions involved sales arranged by Box of OKC motor gasoline to Adams during the period from April 2, 1974 through July 30, 1974. The remaining three transactions involved Box-arranged sales of OKC motor gasoline to Ritco during the period March 21, 1974, through June 13, 1974. While transactions similar to those specified in the information occurred during a much longer period and with other firms, the Box Consent Order, both on its own terms and when read together with the Memorandum of Understanding, makes it clear that these are the only transactions covered by the civil settlement agreement. Consent Order Introduction and ¶¶ 1, 2, Memorandum of Understanding ¶¶ 1, 3, 6. The persons injured as a result of these transactions were the customers who purchased the OKC motor gasoline from Adams or Ritco at allegedly illegal prices. The record clearly indicates that Adams and Ritco not only were not injured in any way by the transactions but were directly involved with Box in committing the alleged violations.[2]

Accordingly, potential claimants are resellers (including retailers and refiners) and end-users who purchased OKC motor gasoline from either Adams or Ritco during the Box consent order period,[3] and who satisfactorily demonstrate that they were injured by the alleged overcharges.[4] *See, e.g., Vickers.* We shall adopt this requirement in the present proceeding.[5] Accordingly, in order to qualify for a refund, resellers must show that market conditions required them to absorb the alleged overcharges. A reseller must also show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[6] The maintenance of a bank will not, however, automatically establish injury. *See, Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). *See also Atlantic Richfield Corp. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

As in many prior special refund cases, we shall also adopt a presumption of injury with respect to small claims by resellers. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). In cases where firms purchased small volumes of product, the cost of gathering evidence of injury could exceed the expected refund. Consequently, without simplified procedures, some injured resellers would be effectively denied an opportunity to obtain a refund. Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any evidence of injury beyond documenting claimed purchase volumes if its refund claim is $5,000 or less.

Resellers who made only spot purchases will be presumed to have suffered no injury. They shall therefore be ineligible for any refund, even a refund at or below the small claims threshold level. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of OKC product from Adams or Ritco at increased prices unless they were able to pass through the full amount of the quoted selling price to their own customers. *See Vickers*, 8 DOE at 85,396–97; *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of the spot purchase(s).

2. End-Users. As we indicated in the Proposed Decision, we shall establish a presumption that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled by the Box Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which

[2] Adams' and Ritco's owners pled guilty to charges of selling petroleum products at higher prices than permitted under the price regulations in the same transactions that were specified in the Box criminal information. *United States v. John R. Adams*, CR. No. 78–166–T (W.D. Okla. December 14, 1978) ($100,000 fine). *United States v. Whitley and Gummelt*, CR No. 79–165–T (W.D. Okla. December 17, 1979) ($15,000 fine for each defendant).

[3] The Box consent order period for firms that purchased OKC motor gasoline from Adams is April 2, 1974 through July 30, 1974. For firms that purchased OKC motor gasoline from Ritco, the Box consent order period is March 21, 1974 through June 13, 1974.

[4] Any of the other "friendly brokers" who may have purchased from Adams and Ritco are also ineligible for a refund on the grounds of "unclean hands." *See OKC*, 9 DOE at 85,270; *see also Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984). These other brokers are: Boyce Box d/b/a Quality Oil; Robert Vail d/b/a Robert Vail, Inc.; Consolidated Materials, Inc., a consolidation of Stonewalk Corporation and CLB Corporation, owned primarily by Donald G. Baxter; and Metro Energy, owned by Phil and Jean Parker. *See SEC v. Cloyce K., Box and OKC*, CA–3–80–1217D, (N.D. Tex.) (First Supplemental Complaint for Permanent Injunction).

[5] We recognize, of course, that in the present case the price increases were imposed not by the person who entered into the consent order, i.e., Box, but by Adams and Ritco.

[6] Banks must be shown from the month of purchase until the date the bank requirement for motor gasoline was eliminated—July 15, 1979 for retailers, May 1, 1980 for most resellers and retailer-resellers, and January 28, 1981 for refiners and the 52 resellers and retailer-resellers listed at 46 FR 81255 (December 10, 1980), Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 15,497C.

justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, an end-user of OKC refined products purchased from Adams or Ritco need only document that it was an ultimate consumer of a specific amount of OKC motor gasoline to make a sufficient showing that it was injured by the alleged overcharges.

B. Calculation of Refund Amounts. In the Proposed Decision, we indicated our intention to adopt a presumption that the alleged overcharges were dispersed equally in the sales of OKC motor gasoline by Adams and Ritco in the 23 transactions specified in the criminal information. We received no adverse comments on this proposal, and since it remains the most practical option, we shall adopt it. In order to calculate a per gallon refund amount under the volumetric method, we shall divide the principal amount of the Box consent order fund, $500,000, by the 9,700,260 gallons of OKC motor gasoline which was purchased and resold by Adams and Ritco during the Box consent order period (March 21, 1974 through July 30, 1974). This yields a refund amount of $0.051545 per gallon.[7]

Finally, as we indicated in the Proposed Decision, we shall establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

C. Application for Refund Procedures. Applications for refund will now be accepted from parties who purchased OKC motor gasoline from Adams and Ritco during the relevant time periods, and who believe they have been injured by the pricing practices of Box in conjunction with those firms. Applications must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.283(b). An application must be in writing, signed by the applicant, and specify that it pertains to the Box Consent Order Fund, Case No. HEF-0041.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Box enforcement proceeding. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Cloyce K. Box Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Box consent order funds, the following subjects should be covered in each application:

A. Each applicant shall certify that it purchased OKC motor gasoline from Adams and/or Ritco during the relevant time period. Each applicant should also provide monthly purchase volume data for those volumes which form the basis of its refund claim.

B. Each applicant should specify how it used the Adams and/or Ritco motor gasoline—i.e., whether it was a reseller or ultimate consumer.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also

(i) state whether it maintained banks of unrecouped product cost increases from the date(s) of purchase through the termination of banking requirements and furnish OHA with quarterly bank calculations.

(ii) state whether it or any of its affiliates have filed any other applications for refund in which they have referred to their banks to demonstrate injury.

(iii) submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Cloyce K. Box pursuant to the Consent Order executed on July 17, 1980 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-22861 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

[7] Like the other presumptions we are establishing in this proceeding, the volumetric presumption is rebuttable. The volumetric method of computing refunds represents a simple and equitable alternative available to firms which are not able to perform the difficult task of substantiating a particular level of alleged overcharge and injury. Any claimant may attempt to establish that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Quaker State Oil Refining Corp.*, 13 DOE § 85,211 at 88,552 (1985).

Supplemental Order

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of revision of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces a revision of the February 7, 1986 Decision and Order that established procedures for disbursement of $2,404,055 obtained as a result of a Consent Order which the DOE entered into with Beacon Oil Company. *Beacon Oil Company*, Case No. HEF-0203, 51 F.R. 5786 (February 18, 1986). Specifically, the volumetric factor in the Beacon Oil Company Special Refund Proceeding has been raised to $0.015277 per gallon. The reason for this modification is set forth in the accompanying Supplemental Order.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

Dated: September 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 26, 1986.

Decision and Order of the Department of Energy

Supplemental Order

Name of Firm: Beacon Oil Company
Date of Filing: September 12, 1986
Case Number: KFX-0022

This proceeding involves $2,404,055 plus accrued interest which the Beacon Oil Company (Beacon) remitted to the Department of Energy (DOE) pursuant to a 1979 consent order. Under the terms of the Consent Order, Beacon agreed to refund a total of $6,800,000, including the payments to the DOE, in settlement of the firm's potential liability for alleged regulatory violations during the period August 19, 1973, through March 31, 1975 (consent order period).

On February 7, 1986, the Office of Hearings and Appeals (OHA) of the DOE instituted refund procedures for the distribution of the funds remitted by Beacon. *Beacon Oil*

Company, 14 DOE ¶ 85,011 (1986) (*Beacon*). In *Beacon* we established specific requirements under which purchasers of Beacon covered products may file Applications for Refund. To date we have received 74 such applications. Pursuant to *Beacon*, potential refunds for most of these claimants were to be calculated by multiplying purchase volumes by a volumetric factor of $0.005383 per gallon.[1] However, one of the claimants has argued that an adjustment of this figure is warranted.

The volumetric factor in *Beacon* was computed by dividing the $2,404,055 which Beacon remitted to the DOE by the 446,571,042 gallons of regulated products estimated to have been sold by Beacon during the consent order period. However, in addition to the funds deposited with the DOE, Beacon made direct refunds totaling $4,395,945 (64.6 percent of the total consent order amount) to its customers. The volumes for which these direct refunds were paid may not form the basis for a refund in this Beacon proceeding. Since direct refunds have been made for volumes of refined products produced and sold by Beacon and since these volumes cannot be used to gain a refund in this proceeding, the computation of the Beacon volumetric should not have included the direct refund volumes.[2]

Ideally, we should reduce Beacon's total sales of refined products during the consent order period by the volume of product sales associated with the direct refunds. The resulting volume would then be divided into the portion of the amount consent order that Beacon deposited with the DOE, *i.e.*, $2,404,055, to arrive at a revised volumetric factor. However, we lack the type of detailed sales volume data which would allow us to perform this calculation. Nevertheless, a reasonable approximation of this computation may be achieved if we assume—as we do in the calculation of all volumetric factors—that the total amount specified to be refunded in the Beacon Consent Order was spread equally over all gallons of regulated products sold by Beacon during the consent order period. Dividing that total consent order amount ($6,800,000) by the total volume of Beacon's sales of regulated products (446,571,042) products a volumetric factor of $0.015277 per gallon.

It Is Therefore Ordered That:

(1) Decision and Order issued by the Department of Energy on February 7, 1986, *Beacon Oil Company*, 14 DOE ¶85,011 (1986), is hereby revised as set forth in Paragraph (2) below.

(2) The volumetric factor in the Beacon Oil Company Special Refund Proceeding is hereby modified to equal $0.015277 per gallon.

(3) This is a final order of the Department of Energy.

Dated: September 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-22862 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

[1] A few applicants are claiming refunds based upon amounts of unpaid motor gasoline credit. As stated in Beacon, the volumetric factor will not be used in calculating these claimants' refunds. As a result, this supplemental order has no bearing on these applications.

[2] We have on occasion amended the calculation of a volumetric factor. *See* Earth Resources Company/Lubricants, Incorporated et al., 14 DOE ¶85,203 (1986); Little America Refining Company, Inc./The M. H. Cook Pipeline Construction Co., 13 DOE ¶85,254 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[SB-FRL-3093-3]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room #4, South Conference Center, 401 M Street SW., Washington, DC on October 27-28, 1986. The meeting will begin at 8:30 a.m. each day and last until 5:30 p.m. on October 27, and until 4:00 p.m. on October 28.

The primary purpose of the meeting will be to continue review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludge under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR Parts 220 through 229). The committee will also discuss possible topics for future reviews.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Mr. Eric Males, Executive Secretary at (202) 382-2552. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Males prior to October 20, 1986 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: October 2, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-22945 Filed 10-8-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00231; FRL-3093-7]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, October 27, and Tuesday, October 28, 1986, beginning at 8:30 a.m. each day and concluding by 4:30 p.m., Tuesday, October 28.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (207-236-4325).

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of ground water protection and disposal of pesticide waste, excess pesticides, and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The meeting of the Working Committee will be concerned with the following topics:

1. Status of response to resolutions passed at February 1986 meeting.

2. Update of Office of Groundwater Protection activities relating to pesticides, including wellhead protection program and workshop on environmental indicators.

3. Update on Office of Drinking Water-Office of Pesticide Programs (ODW-OPP) National Survey of Pesticides in Drinking Water Wells, including county selection, analytical methods, health advisory levels, and State advisory body.

4 Agricultural chemicals in ground water strategy: update after Coolfont.

5. Status of educational efforts to protect ground water.

6. Status report on OPP regulatory actions concerning ground water protection, with specific reference to aldicarb.

7. FIFRA–RCRA interface, including status of OPP action plan for implementation of OPP–Office of Solid Waste agreement to work together on questions of pesticide disposal.

8. Discussion of hazardous waste mixtures rule.

9. Federal and State policies on secondary containment of pesticides and pesticide and pesticide waste.

Illinois studies on rinse water and storm water runoff sampling.

11. Future educational efforts relating to pesticide waste disposal.

12. Other topics as appropriate.

Dated: October 2, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–22941 Filed 10–8–86; 8:45 am]

BILLING CODE 6560-50-M

[PF-466; FRL-3087-1]

Pesticide Tolerance Petitions, Rhone-Ponienc, Inc., et al.

Correction

In FR Doc. 86–21822 beginning on page 35033 in the issue of Wednesday, October 1, 1986, make the following corrections:

1. On page 35034, in the first column, in paragraph 1., in the sixth and seventh lines, the space should be removed between "dichlorophen" and "yl".

2. Also on page 35034, in the first column, in paragraph 3., in the ninth and tenth lines, remove the space between "chlorophen" and "yl"; and in the tenth line, remove ">".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-521]

Final Action Approval of Conversion Application; First Federal Saving and Loan Association of Panama City, Panama City, FL

Dated: October 1, 1986.

Notice is hereby given that on September 11, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Panama City, Panama City, Florida for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20522, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board,

Jeff Sconyers,

Secretary.

[FR Doc. 86–22887 Filed 10–8–86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-522]

Final Action Approval of Conversion Application; Home Unity Savings and Loan Association, Lafayette Hill, PA

Dated: October 1, 1986.

Notice is hereby given that on September 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Unity Savings and Loan Association, Lafayette Hill, Pennsylvania for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board,

Jeff Sconyers,

Secretary.

[FR Doc. 85–22888 Filed 10–8–86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: October 27–28, 1986.

Place: Wolverine Room, Hyatt Regency Hotel, 151 West Fifth Street, Cincinnati, Ohio 45202.

Time and Type of Meeting: Open 9 a.m. to 5 p.m.—October 27; 9 a.m. to 12 noon—October 28.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; discussion of issues related to the x-ray surveillance program for underground coal miners; the study of pneumoconiosis among anthracite surface miners; and a discussion of noise-induced hearing loss among miners.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 3, 1986.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86–22889 Filed 10–8–86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86M-0390]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Sterile lens Lubricant for Sensitive Eyes

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments

of 1976, of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 10, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On October 8, 1985, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES for use to moisten lenses, to reduce friction against the cornea, to relieve minor irritation, discomfort, or blurring which may occur while wearing soft (hydrophilic) contact lenses.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES states that the solution is indicated for use to moisten lenses, to reduce friction against the cornea, to relieve minor irritation, discomfort, or bluring which may occur while wearing soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contract lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 10, 1986 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 1, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-22866 Filed 10-8-86; 8:45 am]

BILLING CODE 4100-01-M

[Docket No. 86N-0400]

Smith Kline and French Laboratories et al.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 42 new drug applications (NDA's) based on the written request of the applicants.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed below have informed FDA that these drug products are no longer marketed. They have requested that FDA withdraw approval of the NDA's and have waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
0-004	Paredine Jelly & Topical Solution (only those portions of NDA 0-004 that pertain to these products).	Smith Kline and French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
1-918	B-Qua	O'Neal, Jones & Feldman Pharmaceuticals, 2510 Metro Blvd., Maryland Heights, MO 63043.
2-805	Pragmatar Ointment	Menley & James Laboratories, One Franklin Plaza, P.O. Box 8082, Philadelphia, PA 19101.
2-855	Cepacol Mouth/Gargle	Merrell Dow Pharmaceuticals, Inc., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
5-172	Tuamine Sulfate Solution	Eli Lilly, 307 E. McCarthy St., Indianapolis, IN 46285.
5-474	Lorophyn Vaginal Jelly	Norwich Eaton Pharmaceuticals, Inc., 13-27 Eaton Ave., Norwich, NY 13815.
5-478	Penicillin	Bristol Laboratories, P.O. Box 4755, Syracuse, NY 13221.
5-721	Penicillin Calcium	Do.
5-959	Cellothyl Tablets	Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
6-332	Thephorin Syrup	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
6-714	Alidase Injection	Searle, Division of G. D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.

NDA	Drug name	Applicant's name and address
7-026	Thephorin AC Tablets	Hoffmann-LaRoche, Inc.
7-029	Perandren Propionate Injection	Ciba-Geigy, Summit, NJ 07901.
7-057	Inhiston Tablets	Plough, Inc., P.O. Box 377, Memphis, TN 38151.
7-702	Bristamin Tablets	Bristol Laboratories.
7-863	Quotane Ointment	Menley & James Laboratories.
7-937	Neohetramine HCl Cream	Parke-Davis.
7-943	Quotane Lotion	Menley & James Laboratories.
8-113	Bristalin Cough Syrup	Bristol Laboratories.
8-390	Rimifon Tablets	Hoffmann-LaRoche, Inc.
8-862	Diphenylpryaline HCl	Diamond Shamrock Chemicals Co., 350 Mt. Kemble Ave., Morristown, NJ 07960.
8-886	Provell Maleate Tablets	Eli Lilly Co.
9-224	Ilidar Ampules	Hoffmann-LaRoche, Inc.
9-314	Romilar Tablets	Do.
9-349	Perandren Phenylacetate	Ciba-Geigy.
9-589	F-Cortef Acetate Lotion	The Upjohn Co., Kalamazoo, MI 49001.
9-744	Toclase Syrup	Pfizer Pharmaceuticals, Pfizer, Inc., 235 E. 42nd St., New York, NY 10017.
10-418	Xylocaine Solution	Astra Pharmaceutical Products, Inc., 50 Otis St., Westboro, MA 01581.
10-755	Delta-Cortef Acetate Lotion	The Upjohn Co.
10-904	Cyanocon	O'Neal, Jones, & Feldman Pharmaceuticals.
11-244	Romilar CF Capsules	Hoffmann-LaRoche, Inc.
12-377	C.O.S. Capsules	Riker Laboratories, Inc., 270-3A 3M Center, St. Paul, MN 55144.
12-394	Disophrol Tablets	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07003.
14-124	Tickle Tackle Inhalant	Menley & James Laboratories.
14-125	"C3" Capsules	Do.
14-174	Nebair Aerosol Inhaler	Parke-Davis.
14-196	Vapo-N-Iso Metermatic Aerosol Inhaler	USV Laboratories, 303 S. Broadway, Tarrytown, NY 10591.
14-545	Bristuron Tablets	Bristol Laboratories.
14-764	Robinul Injection	A.H. Robins Co., Inc., 1407 Cummings Dr., Richmond, VA 23220.
17-023	Methotrexate Parenteral	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
17-035	Heparin Sodium Injection	Cord Laboratories, 2555 W. Midway Blvd., Broomfield, CO 80020.
17-721	Heparin Sodium Injection	Sterilab Corp., 500 Oakdale Rd., Ontario, Canada M3N1W6.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3) (published in the **Federal Register** of April 26, 1985 (50 FR 16636)), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e)) and under authority delegated to the Deputy Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above or pertinent parts thereof, and supplements thereto, is hereby withdrawn.

This order becomes effective on November 10, 1986.

Dated: September 30, 1986.

Paul Parkman,

Deputy Director, Center for Drugs and Biologics.

[FR Doc. 86-22865 Filed 10-8-86; 8:45 am]

BILLING CODE 4100-01-M

Public Health Service

International Classification of Diseases, Ninth Revision, Clinical Modification; Addition

Notice is hereby given that new diagnostic codes for HTLV-III/LAV Infections are being added to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) effective October 1, 1986.

AGENCY: National Center for Health Statistics (NCHS), Public Health Service.

SUMMARY: This notice announces the complete tabular listing and index terms applicable to the new ICD-9-CM codes for HTLV-III/LAV Infections.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related HHS programs. The addendum for Volumes 1 and 2 announced here are new disease codes for HTLV-III/LAV Infections, including complete tabular listing and index terms. Previous announcements made in the **Federal Register** August 29, 1986 and September 3, 1986 were limited to titles of the codes only.

The following announcement is a duplication of the published addendum to the ICD-9-CM available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Meads, National Center for Health Statistics, Center Building, Room 2-19, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436-7019.

Dated: September 11, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

BILLING CODE 4160-17-M

Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) Infection Classification

Background

In December 1985, Dr. Walter R. Dowdle, then Director of the Center for Infectious Disease of the Centers for Disease Control sent a memorandum to Robert A. Israel, Head, World Health Organization Collaborating Center for Classification of Diseases for North America, located at the National Center for Health Statistics, in which he stated:

> The increasing importance of HTLV-III/LAV infection has created a demand for more specific disease codes that would allow public health officials, clinical researchers, and agencies that finance medical care to accurately monitor diagnoses of AIDS and other manifestations of HTLV-III/LAV infection as they are coded on death certificates and medical records. The next revision of the ICD (ICD-10) will not become available for another 8 or 9 years. The urgency of responding to the epidemic of HTLV-III/LAV is too great to delay that long.
>
> We propose that new codes be created for the ICD-9-CM that will be specific for HTLV-III/LAV infection. Newly created ICD-9-CM codes should be specific enough to distinguish between HTLV-III/LAV infections causing AIDS (as defined by the Centers for Disease Control), those causing clinical manifestations other than AIDS, and those causing subclinical illness.

While it is, in general, undesirable to create new disease codes between revisions, it is felt that the creating of new codes for HTLV-III/LAV infection for the ICD-9-CM is justified.

A working party was established consisting of representatives from the Centers for Disease Control; National Center for Health Statistics; and the World Health Organization Collaborating Center for Classification of Diseases for North America. This classification is the result of months of deliberation by this working party.

Structure of the Classification

The classification consists of three 3-digit rubrics with 4-digit subdivisions utilizing the now vacant ICD-9-CM codes 042,043,044 in Chapter I, Infectious and Parasitic Diseases. This allows for the placement of HTLV-III/LAV infections at the beginning of viral diseases. Following the advice of the Centers for Disease Control, the categories are defined primarily by the manifestations of the disease. Clear identification of the manifestations is required for the selection of the correct code. Multiple coding of all listed manifestations of HTLV-III/LAV infections is required. Further, it is also necessary that certain of the manifestations be listed in a "due to" or other causal relationship in order to select the appropriate code. Other manifestations need only to be listed on the record with the HTLV-III/LAV infection to assume a "with" relationship. Recognizing the difficulties inherent in this method of arriving at the correct code, an alphabetical table has been developed which lists manifestations in the "with" and "due to" relationship with HTLV-III/LAV infections and the appropriate code. Coders are instructed to always use the table first as they would the index of ICD-9-CM.

Definitions

This classification is not intended for purposes of staging or for determinations of severity of illness. Rather, it is based on well-defined groupings of disease manifestations most compatible with the manner in which patients with HTLV-III/LAV infection are currently categorized by providers of health care services, clinical investigators, researchers, and public health officials. Thus, the spectrum of HTLV-III/LAV infection can be reasonably divided into three categories:

1. HTLV-III/LAV infection with specified secondary infections and malignant neoplasms (042).

2. HTLV-III/LAV infection with other specified manifestations in the absence of specified secondary infections and malignant neoplasms (043).

3. Other HTLV-III/LAV infection not classifiable above (044).

The terms listed below are descriptive of the three categories of HTLV-III/LAV infection.

042 AIDS: Acquired immune deficiency syndrome
Acquired immunodeficiency syndrome

043 AIDS-like disease (illness) (syndrome)
AIDS-like syndrome
AIDS-related complex
AIDS-related conditions
ARC
Pre-AIDS
Prodromal-AIDS

044 HTLV-III/LAV infection
AAV (disease) (illness) (infection)
AIDS-associated retrovirus (disease) (illness) (infection)
AIDS-associated virus (disease) (illness) (infection)
AIDS-related virus (ARV) (disease) (illness) (infection)
AIDS virus (disease) (illness) (infection)
Human T-cell lymphotropic virus (disease) (illness) (infection)
LAV (disease) (illness) (infection)
Lymphadenopathy-associated virus (LAV) (disease) (illness) (infection)

Terminology

The use of unacceptable terminology and abbreviations should be discouraged. Acquired immunodeficiency syndrome (AIDS) is neither synonymous with HTLV-III/LAV infection nor with terms such as pre-AIDS and AIDS-related complex or syndromes.

Records which report "Possible", "Probable", or "Questionable" AIDS, not confirmed, without manifestations listed should be returned to the physician for clarification.

How to Use This Classification

In order to correctly use these codes, the physician must provide complete information and state the relationship between HTLV-III/LAV infections and other conditions. It will not be unusual for a patient suffering from HTLV-III/LAV infection to be admitted for an unrelated condition.

The classification requires that the relationship between the HTLV-III/LAV infection, the manifestations, and other listed conditions be identified. The term "with" implies that the condition or manifestation of HTLV-III/LAV infection need only be listed on the record. Terms such as "and" and "in association with" will be considered in the same manner as "with".

The term "due to" is used in this classification to denote a causal relationship. The broad definition of "due to" is implied here as it is used in the *International Classification of Diseases, 9th Revision.*

> The words "due to (or as a consequences of)" which appear on the form of medical certificate include not only etiological or pathological sequences, but also sequences where there is no such direct causation but where an antecedent condition is believed to have prepared the way for the direct cause by damage to tissues or impairment of function even after a long interval. (ICD-9, Volume I, page 700)

All manifestations of HTLV-III/LAV infections must be coded. The alphabetical table will assist the coder in selection of the most appropriate code for the HTLV-III/LAV infection in association with the most common manifestations. Other manifestations not found on the table may be reported. The selection of the appropriate 042-044 code is determined solely by the terminology used for the HTLV-III/LAV infection. Codes 042, 043, and 044 are mutually exclusive and they can never be listed together on the same record. Priority is given to 042 over 043 and 044; 043 is given priority over 044.

Only *one* code from the 042-044 series should be used. For instance, a patient with candidiasis of the lung (112.4), Kaposi's sarcoma (173), and HTLV-III/LAV infection described as AIDS, would be assigned only one 042 code. Select a single HTLV-III/LAV infection code based on a discussion with the attending physician as to the most descriptive code for the admission. This code may change during subsequent admissions.

The principal diagnosis should be selected based on the individual discharged. The HTLV-III/LAV infection codes can be used as either principal or a secondary diagnosis. The notes "with" and "due to HTLV-III/LAV infection" do not imply sequencing.

This classification is intended as an interim system, to be used while additional scientific information on the pathogenesis and natural history of HTLV-III/LAV infection is accumulated. Following 1 year of use, this classification will be reviewed for its appropriateness and ease in use.

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS (HTLV-III/LAV) INFECTION (042-044)

Note: In this classification, the following terms are used to define and to represent other terms which are referable to these categories 042-044.

1. AIDS: Acquired immune deficiency syndrome
   Acquired immunodeficiency syndrome

2. AIDS-like syndrome:
   AIDS-related complex
   AIDS-related conditions
   ARC Pre-AIDS
   AIDS-like disease (illness) (syndrome)
   Prodromal-AIDS

3. HTLV-III/LAV infection:
   Human T-cell lymphotropic virus (disease) (illness) (infection)
   Lymphadenopathy-associated virus (disease) (illness) (infection)
   LAV (disease) (illness) (infection)
   AIDS-associated virus (disease) (illness) (infection)
   AAV (disease) (illness) (infection)
   AIDS-associated retrovirus (disease) (illness) (infection)
   ARV (disease) (illness) (infection)
   AIDS virus (disease) (illness) (infection)
   Human immunodeficiency virus (disease) (illness) (infection)
   HIV (disease) (illness) (infection)

042 Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) infection with specified conditions.

Includes: Acquired Immunodeficiency Syndrome
AIDS

042.0 With specified infections

Includes only:
- candidiasis of lung (112.4)
- coccidiosis (007.2)
- cryptococcosis (117.5)
- cryptosporidiosis (007.2)
- pneumocystosis (136.3)
- progressive multifocal leukoencephalopathy (046.3)
- toxoplasmosis (130)

} With HTLV-III/LAV Infection

042.1 Causing other specified infections

Includes only:
- candidiasis
  - disseminated (112.5)
  - of: mouth (112.0)
    - skin and nails (112.3)
    - other and unspecified sites (112.8, 112.9) (excludes: 112.1, 112.2, 112.4)
- coccidioidomycosis (114)
- cytomegalic inclusion disease (078.5)
- herpes simplex (054)
- herpes zoster (053)
- histoplasmosis (115)
- mycobacteriosis, other and unspecified (031.8, 031.9) (excludes: 031.0, 031.1)
- Nocardia infection (039)
- opportunistic mycoses (118)
- pneumonia:
  - NOS (486)
  - viral NOS (480.9)
- Salmonella infections (003.1-003.9) (except gastroenteritis 003.0)
- septicemia (038)
- strongyloidiasis (127.2)
- tuberculosis (010-018)

} Due to HTLV-III/LAV Infection

042.2 With specified malignant neoplasms

Includes only:
- Burkitts's tumor (200.2)
- Kaposi's sarcoma (173)
- immunoblastic sarcoma (202.8)
- primary lymphoma of the brain (202.8)
- reticulosarcoma (200.0)

} With HTLV-III/LAV Infection

042.9 Acquired immunodeficiency syndrome with or without other conditions

043 Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) infection causing other specified conditions

Includes: AIDS-like syndrome
ARC

Excludes: AIDS (042)
Other conditions classifiable in 042

043.0 Causing lymphadenopathy (785.6)

043.1 Causing specified diseases of the central nervous system

Includes only:
central nervous system:
demyelinating disease NOS (341.9)
disorders NOS (348.9,349.9)
non-arthropod-borne viral diseases, other and unspecified (049.8,049.9)
slow virus infection, other and unspecified (046.8,046.9)
dementia:
NOS (298.9)
organic (294.9)
presenile (290.1)
encephalitis (323.9)
encephalomyelitis (323.9)
encephalopathy (348.3)
myelitis (323.9)
myelopathy (336.9)
organic brain syndrome NOS (nonpsychotic) (310.9) psychotic (294.9)

} Due to HTLV-III/LAV Infection

043.2 Causing other disorders involving the immune mechanism (279)

043.3 Causing other specified conditions

Includes only:
- abnormal weight loss (783.2)
- abnormality, respiratory (786.0)
- agranulocytosis (288.0)
- anemia:
  - NOS (285.9)
  - aplastic, other and unspecified (284.8,284.9)
  - deficiency (280-281)
  - hemolytic, acquired (283)
- arthritis, infective (711.0,711.9)
- blindness or low vision (369)
- blood and blood-forming organs, unspecified disease (289.9)
- cachexia (799.4)
- dermatomycosis (111)
- dermatophytosis (110)
- disease or disorder NOS:
  - blood and blood-forming organs (289.9)
  - salivary gland (527.9)
  - skin and subcutaneous tissue (709.9)
- dyspnea (786.0)
- fatigue (780.7)
- fever (780.6)
- gastroenteritis (infectious 009), (noninfectious 558)
- hepatomegaly (789.1)
- hyperhidrosis (780.8)
- hypersplenism (289.4)
- infection:
  - intestinal, ill-defined (009)
- lack of expected physiological development in infant (783.4)
- leukoplakia of oral mucosa (tongue) (528.6)
- malabsorption, intestinal (579.9)
- malaise (780.7)
- neuralgia NOS (729.2)
- neuritis NOS (729.2)
- nutritional deficiencies (260-269)
- polyneuropathy (357.0,357.8,357.9)
- pyrexia (780.6)
- radiculitis NOS (729.2)
- rash NOS (782.1)
- retinal vascular changes (362.1)
- retinopathy, background (362.1)
- splenomegaly (789.2)
- thrombocytopenia, secondary and unspecified (287.4,287.5)
- volume depletion (276.5)

} Due to HTLV-III/LAV Infection

043.9 Acquired immunodeficiency syndrome-related complex with or without other conditions

044 Other Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus Infection

Excludes: AIDS (042)
AIDS-related complex (ARC) (043)

044.0 Causing specified acute infections

Includes only:
acute lymphadenitis (683)
aseptic meningitis (047.9)
viral infection ("infectious mononucleosis-like syndrome") (079.9)
} Due to HTLV-III/LAV Infection

044.9 HTLV-III/LAV Not otherwise specified (with or without other conditions not classifiable to 042, 043, 044.0)

795.8 Positive serological or viral culture findings for Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV)

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Abnormal, abnormality						
respiratory (786.0)	044.9	043.3	043.9	043.3	042.9	042.9
weight loss (783.2)	044.9	043.3	043.9	043.3	042.9	042.9
Agranulocytosis (288.0)	044.9	043.3	043.9	043.3	042.9	042.9
AIDS (042.9)	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like disease (043.9)	043.9	043.9	043.9	043.9	042.9	042.9
Anemia (285.9)	044.9	043.3	043.9	043.3	042.9	042.9
aplastic (284.9)	044.9	043.3	043.9	043.3	042.9	042.9
specified NEC (284.8)	044.9	043.3	043.9	043.3	042.9	042.9
deficiency (280-281)	044.9	043.3	043.9	043.3	042.9	042.9
hemolytic, acquired (283)	044.9	043.3	043.9	043.3	042.9	042.9
Arthritis (716.9)	044.9	044.9	043.9	043.9	042.9	042.9
infective (711.9)	044.9	043.3	043.9	043.3	042.9	042.9
pyogenic (711.0)	044.9	043.3	043.9	043.3	042.9	042.9
Blindness (369)	044.9	043.3	043.9	043.3	042.9	042.9
Burkitt's tumor (200.2)	042.2	042.2	042.2	042.2	042.2	042.2
Cachexia (799.4)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY—ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Candidiasis (112.9)	044.9	042.1	043.9	042.1	042.9	042.1
disseminated (112.5)	044.9	042.1	043.9	042.1	042.9	042.1
lung (112.4)	042.0	042.0	042.0	042.0	042.0	042.0
mouth (112.0)	044.9	042.1	043.9	042.1	042.9	042.1
nails (112.3)	044.9	042.1	043.9	042.1	042.9	042.1
skin (112.3)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (112.8)	044.9	042.1	043.9	042.1	042.9	042.1
Changes, retinal vascular (362.1)	044.9	043.3	043.9	043.3	042.9	042.9
Coccidioidomycosis (114)	044.9	042.1	043.9	042.1	042.9	042.1
Coccidiosis (007.2)	042.0	042.0	042.0	042.0	042.0	042.0
Cryptococcosis (117.5)	042.0	042.0	042.0	042.0	042.0	042.0
Cryptosporidiosis (007.2)	042.0	042.0	042.0	042.0	042.0	042.0
Cytomegalic inclusion disease (078.5)	044.9	042.1	043.9	042.1	042.9	042.1
Deficiency						
nutritional (260-269)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Dementia (298.9)	044.9	043.1	043.9	043.1	042.9	042.9
organic (294.9)	044.9	043.1	043.9	043.1	042.9	042.9
presenile (290.1)	044.9	043.1	043.9	043.1	042.9	042.9
Depletion of (fluid) volume (276.5)	044.9	043.3	043.9	043.3	042.9	042.9
Dermatomycosis (111)	044.9	043.3	043.9	043.3	042.9	042.9
Dermatophytosis (110)	044.9	043.3	043.9	043.3	042.9	042.9
Disease -- see also Disorder						
AIDS (042.9)	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like (043.9)	043.9	043.9	043.9	043.9	042.9	042.9
blood and blood-forming organs (289.9)	044.9	043.3	043.9	043.3	042.9	042.9
brain (348.9)	044.9	043.1	043.9	043.1	042.9	042.9
central nervous system (349.9)	044.9	043.1	043.9	043.1	042.9	042.9
demyelinating (341.9)	044.9	043.1	043.9	043.1	042.9	042.9
non-arthropod-borne viral (049.9)	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (049.8)	044.9	043.1	043.9	043.1	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Disease -- see also Disorder, cont.						
central nervous system, cont.						
slow virus infection (046.9).....	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (046.8).....	044.9	043.1	043.9	043.1	042.9	042.9
HTLV-III/LAV (044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
salivary gland (527.9).....	044.9	043.3	043.9	043.3	042.9	042.9
skin (709.9).....	044.9	043.3	043.9	043.3	042.9	042.9
subcutaneous tissue (709.9).....	044.9	043.3	043.9	043.3	042.9	042.9
Disorder -- see also Disease						
immune mechanism, other (279).....	044.9	043.2	043.9	043.2	042.9	042.9
Dyspnea (786.0).....	044.9	043.3	043.9	043.3	042.9	042.9
Encephalitis (323.9).....	044.9	043.1	043.9	043.1	042.9	042.9
Encephalomyelitis (323.9).....	044.9	043.1	043.9	043.1	042.9	042.9
Encephalopathy (348.3).....	044.9	043.1	043.9	043.1	042.9	042.9
Fatigue (780.7).....	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY—ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Fever (780.6)	044.9	043.3	043.9	043.3	042.9	042.9
Gastroenteritis (non-infectious) (558)	044.9	043.3	043.9	043.3	042.9	042.9
infectious (009)	044.9	043.3	043.9	043.3	042.9	042.9
Hepatomegaly (789.1)	044.9	043.3	043.9	043.3	042.9	042.9
Herpes						
simplex (054)	044.9	042.1	043.9	042.1	042.9	042.1
zoster (053)	044.9	042.1	043.9	042.1	042.9	042.1
Histoplasmosis (115)	044.9	042.1	043.9	042.1	042.9	042.1
HTLV-3 (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
HTLV-III (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
Hyperhidrosis (780.8)	044.9	043.3	043.9	043.3	042.9	042.9
Hypersplenism (289.4)	044.9	043.3	043.9	043.3	042.9	042.9
Infection, infective						
AIDS virus (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
arthritis (711.9)	044.9	043.3	043.9	043.3	042.9	042.9
pyogenic (711.0)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY—ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Infection, infective, continued.						
HTLV-3 (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
HTLV-III (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
intestinal NEC (009)	044.9	043.3	043.9	043.3	042.9	042.9
Nocardia (039)	044.9	042.1	043.9	042.1	042.9	042.1
Salmonella (003.9)	044.9	042.1	043.9	042.1	042.9	042.1
localized (003.2)	044.9	042.1	043.9	042.1	042.9	042.1
septicemia (003.1)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (003.8)	044.9	042.1	043.9	042.1	042.9	042.1
slow virus (046.9)	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (046.8)	044.9	043.1	043.9	043.1	042.9	042.9
viral (079.9)	044.9	044.0	043.9	043.9	042.9	042.9
Kaposi's sarcoma (173)	042.2	042.2	042.2	042.2	042.2	042.2
Lack of development, physiological,						
in infant (783.4)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Leucoencephalopathy, multifocal (progressive) (046.3)	042.0	042.0	042.0	042.0	042.0	042.0
Leukoplakia						
gingiva (528.6)	044.9	043.3	043.9	043.3	042.9	042.9
lip (528.6)	044.9	043.3	043.9	043.3	042.9	042.9
mouth (528.6)	044.9	043.3	043.9	043.3	042.9	042.9
oral, including tongue (mucosa) (soft tissue) (528.6)	044.9	043.3	043.9	043.3	042.9	042.9
Lymphadenitis, acute (683)	044.9	044.0	043.9	043.9	042.9	042.9
Lymphadenopathy (785.6)	044.9	043.0	043.9	043.0	042.9	042.9
Lymphadenopathy-associated virus (LAV)(044.9)	044.9	044.9	043.9	043.9	042.9	042.9
Lymphoma, primary, of the brain (202.8)	042.2	042.2	042.2	042.2	042.2	042.2
Malabsorption (intestinal) (579.9)	044.9	043.3	043.9	043.3	042.9	042.9
Malaise (780.7)	044.9	043.3	043.9	043.3	042.9	042.9
Meningitis, aseptic (047.9)	044.9	044.0	043.9	043.9	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY—ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Mycobacteriosis (031.9)	044.9	042.1	043.9	042.1	042.9	042.1
specified (031.8)	044.9	042.1	043.9	042.1	042.9	042.1
Mycosis, opportunistic (118)	044.9	042.1	043.9	042.1	042.9	042.1
Myelitis (323.9)	044.9	043.1	043.9	043.1	042.9	042.9
Myelopathy (336.9)	044.9	043.1	043.9	043.1	042.9	042.9
Neuralgia (729.2)	044.9	043.3	043.9	043.3	042.9	042.9
Neuritis (729.2)	044.9	043.3	043.9	043.3	042.9	042.9
Nocardiosis (039)	044.9	042.1	043.9	042.1	042.9	042.1
Nutritional deficiencies (260-269)	044.9	043.3	043.9	043.3	042.9	042.9
Pneumocystosis (136.3)	042.0	042.0	042.0	042.0	042.0	042.0
Pneumonia (486)	044.9	042.1	043.9	042.1	042.9	042.1
viral (480.9)	044.9	042.1	043.9	042.1	042.9	042.1
Polyneuritis — see Polyneuropathy						

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Polyneuropathy (357.9)	044.9	043.3	043.9	043.3	042.9	042.9
acute (357.0)	044.9	043.3	043.9	043.3	042.9	042.9
infective (357.0)	044.9	043.3	043.9	043.3	042.9	042.9
specified NEC (357.8)	044.9	043.3	043.9	043.3	042.9	042.9
Psychosis, psychotic						
organic brain syndrome (294.9)	044.9	043.1	043.9	043.1	042.9	042.9
Pyrexia (780.6)	044.9	043.3	043.9	043.3	042.9	042.9
Radiculitis (729.2)	044.9	043.3	043.9	043.3	042.9	042.9
Rash (782.1)	044.9	043.3	043.9	043.3	042.9	042.9
Reticulosarcoma (200.0)	042.2	042.2	042.2	042.2	042.2	042.2
Retinopathy, background (362.1)	044.9	043.3	043.9	043.3	042.9	042.9
Salmonella (infection) (003.9)	044.9	042.1	043.9	042.1	042.9	042.1
localized (003.2)	044.9	042.1	043.9	042.1	042.9	042.1
septicemia (003.1)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (003.8)	044.9	042.1	043.9	042.1	042.9	042.1

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Sarcoma						
immunoblastic (202.8).....	042.2	042.2	042.2	042.2	042.2	042.2
Kaposi's (173).....	042.2	042.2	042.2	042.2	042.2	042.2
Septicemia (038).....	044.9	042.1	043.9	042.1	042.9	042.1
Splenomegaly (789.2).....	044.9	043.3	043.9	043.3	042.9	042.9
Strongyloidiasis (127.2).....	044.9	042.1	043.9	042.1	042.9	042.1
Syndrome						
acquired immune deficiency (042.9)...	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like disease (043.9).....	043.9	043.9	043.9	043.9	042.9	042.9
brain (organic) (nonpsychotic) (310.9).....	044.9	043.1	043.9	043.1	042.9	042.9
psychotic (294.9).....	044.9	043.1	043.9	043.1	042.9	042.9
infectious mononucleosis-like (079.9)	044.9	044.0	043.9	043.9	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Thrombocytopenia (287.5).....	044.9	043.3	043.9	043.3	042.9	042.9
secondary (287.4).....	044.9	043.3	043.9	043.3	042.9	042.9
Toxoplasmosis (130).....	042.0	042.0	042.0	042.0	042.0	042.0
Tuberculosis (010-018).....	044.9	042.1	043.9	042.1	042.9	042.1
Vision, low (369).....	044.9	043.3	043.9	043.3	042.9	042.9

OTHER HTLV-III/LAV STATEMENTS

Carrier (of)	
AIDS virus	V02.9
HTLV-III/LAV	V02.9
Contact (with)	
AIDS virus	V01.8
HTLV-III/LAV	V01.8
Exposure (to)	
AIDS virus	V01.8
HTLV-III/LAV	V01.8
Positive	
culture (for)	
AIDS virus	795.8
HTLV-III/LAV	795.8
serology (for)	
AIDS virus	795.8
HTLV-III/LAV	795.8

[FR Doc. 86-22055 Filed 10-8-86; 8:45 am]
BILLING CODE 4160-17-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86-1642]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Asministration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755.6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The agency form number, if applicable; (4) How frequently information submissions will be required; (5) What members of the public will be affected by the proposal; (6) An estimate of the total number of hours needed to prepare the information submission; (7) Whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Summary of Guaranty Agreeemnt (to include recordkeeping requirements contained in the Guaranty Agreements)
Office: Government National Mortgage Association
Form No. HUD-11716, 11727, 11733, 1723, and 1730
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 11,800
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities
Office: Public and Indian Housing
Form No.: None
Frequency of submission: Annually
Affected public: Individuals or Households and Non-Profit Institutions
Estimated burden hours: 8,000
Status: Extension
Contact: Charles Ashmore, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: Audit Guide for Audits for GNMA Approved Issuers of Mortgage-Backed Securities for Use by Independent Public Accountants
Office: Government National Mortgage Association
Form No.: None
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 4,800
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: Second Request for a Private Sector Organization to Develop and Maintain Model Standards for Use, by Reference, as Federal Manufactured Home Construction and Safety Standards (FMHCSS)
Office: Housing
Form No.: None
Frequency of submission: Single-Time
Affected public: Non-Profit Institutions
Estimated burden hours: 240
Status: New
Contact: Mark Holman, HUD, (202) 755-6590; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Public Housing Development Cost Containment
Office: Public and Indian Housing
Form No.: None
Frequency of submission: On Occasion
Affected public: State or Local Governments and Non-Profit Institutions
Estimated burden hours: 48
Status: New
Contact: Ray Hamilton, HUD, (202) 426-0938; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Report of Additional Classification and Wage Rate Pursuant to a Davis-Bacon Wage Determination
Office: Labor Relations
Form No.: HUD-4230A
Frequency of submission: On Occasion
Affected public: State or Local Governments and Businesses or Other For-Profit
Estimated burden hours: 1,167
Status: New
Contact: Ralph I. Stinson, HUD, (303) 844-5674; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Unreserved Pool of Hours for Various Information Collection Requests for use in OIG Audits and Activities
Office: Office of Inspector General
Form No.: None
Frequency of submission: On Occasion
Affected public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated burden hours: 1,000
Status: New
Contact: Dennis A. Raschka, HUD, (202) 426-6493; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: (1) Schedule of Subscribers and GNMA II Contractual Agreement (to include recordkeeping requirements in the GNMA II MBS Guide (5500.2)); and (2) Schedule of Subscribers Addendum for Construction Loan Certification
Office: Government National Mortgage Association
Form No.: HUD-11705 and 1735
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 8,600
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: October 1, 1986.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 86-22898 Filed 10-8-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N-16650; N-16657; NV-020-07-4212-21]

Notice of Termination of Airport Lease Applications N-16650 and N-16657, Involving Lands in Humboldt County, NV

SUMMARY: This notice supersedes the **Federal Register** Documents 77-12286 published on April 29, 1977 (42 FR 21857), and 77-14861 amended on May 25, 1977 (42 FR 26701).

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Harold S. Green, Realty Specialist, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623-3676.

SUPPLEMENTARY INFORMATION: Termination of land segregation.

Notice is hereby given that airport lease applications N-16650 and N-16657, by John L. Williams of Agricultural Aviation Services, involving the following-described lands, have been rejected:

Mount Diablo Meridian, Nevada

N-16650

T. 39 N., R. 39 E., Sec. 20
W½W½W½, 80 acres.

N-16657

T. 38 N., R. 36 E., Sec. 12
E½E½E½, NW¼NE¼NE¼, N½NW¼NE¼, N½N½NW¼, 150 acres.

The segregative effect of the airport lease applicaiton is hereby removed upon publication of this notice in the **Federal Register.**

Dated: October 2, 1986.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 86-22957 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-40-M

[MT-070-07-4351-02]

Road Closure, Headwaters Resource Area, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Road closure on public lands.

SUMMARY: The BLM has closed a portion of the Nez Perce Ridge Road to motor vehicle travel in order to secure access across private land to reach the upper Sawmill Gulch area.

The closed section of road is the last one-eighth mile of the Nez Perce Ridge road before it crosses the Beaverhead National Forest boundary. It is located in the SW¼ of the SE¼, T. 1 S., R. 10 W., PMM, about three miles west of Divide, Montana. This section of road is closed to all motorized vehicles from October 15 to November 30 annually effective immediately. The closure will remain in effect until further notice.

The authority for the closure is 43 CFR 8342.2.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource, Area Manager, Box 3388, Butte, Montana 59702; Telephone 406/494-5059 (FTS) 585-8265.

James A. Moorhouse,

District Manager.

[FR Doc. 86-22947 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DN-M

[MT-920-06-4121-14]

Coal Lease Offering; Peabody Coal Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency coal lease offering by sealed bid—M 63202—Peabody Coal Company.

SUMMARY: Notice is hereby given that the coal resource in the lands described below in Rosebud County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency application filed by Peabody Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended.

An environmental assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR Part 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 4.5 miles south of the town of Colstrip and adjacent to Peabody Coal Company's Big Sky Mine and are described as follows:

T. 1 N., R. 41 E., P.M.M.

Sec. 24: W½NW¼NE¼, NW¼SW¼NE¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼, and NE¼SE¼NW¼

Containing 110.00 acres, Rosebud County, Montana.

The tract contains an estimated 1.66 million tons of recoverable subbituminous coal. Two economically minable beds, the Rosebud and McKay are found in this tract. The upper Rosebud seam averages 25 feet in thickness and the lower McKay seam averages 9 feet in thickness. The recoverable coal averages (as-received) 8,651 BTU/lb., with 25.6 moisture, 0.74 percent sulfur, 8.0 percent ash, 38.3 percent fixed carbon, and 28.2 percent volatile matter.

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATE: Lease Sale—The lease sale will be held at 10:00 a.m., Wednesday, November 5, 1986, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 9:00 a.m., Wednesday, November 5, 1986, to the Cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107. The bids should be sent by certified mail, return receipt; or be hand-delivered. The Cashier, will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile

documents are also available for public inspection at the Montana State Office.

Dean Stepanek,

State Director.

[FR Doc. 86-22959 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DN-M

[UT-050-4410-08]

Availability of Final Environmental Impact Statement; Warm Springs Resource Area Proposed Resource Management Plan, UT

AGENCY: Bureau of Land Managment, Department of Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Warm Springs Resource Area (WSRA) proposed resource managment plan (RMP) inlcuding proposed areas of critical environmental concern (ACECs).

SUMMARY: This proposed RMP/final EIS defines the proposed plan for management of resources on the 2.2 million acres of public lands in the WSRA in Millard County, Utah. The proposed plan was, with minor changes, additions, or corrections and further definintion of actions, the preferred alternative in the WSRA Draft RMP/EIS which was distributed for public review and comment in April 1986.

The proposed RMP/final EIS includes the comments received on the Draft RMP/EIS and responses to those comments.

The plan proposes levels of grazing for livestock, big game wildlife, and wild horses. Overall management prescriptions for the multiple-use managment of all resources are proposed, as are management designations including special management areas (including ACECs), recreation areas, off-road vehicles use designations, fluid mineral leasing categories, and proposed mineral withdrawals.

Areas proposed for ACEC designation are: Pavant Butte (2,500 acres). An inactive volcanic crater, also known as Sugarloaf Mountains is a historic peregrine falcon (an endangered species) eyrie and planned reintroduction site. It has landform features that are outstanding for interpretation and study. It would be withdrawn from mineral entry, placed in Category 3 for fluid mineral leasing, closed to vehicular traffic, retained in Federal ownership, and be a right-of-way avoidance area. State section 32 would be acquired by exchange if possible.

Tabernacle Hill Lave Field (3,567 acres) contains a combination geologic/volcanic features probably unique in the Western U.S. It would be withdrawn from mineral entry, placed in Category 3 for fluid mineral leasing, and be a right-of-way avoidance area. Recreation facilities would be developed, ORV use limited to existing roads, State Section 16 acquired by exchange if possible, and rockhounding and shooting prohibited.

Any person who participated in the planning process and has an interest which may be adversely affected by approval of the proposed plan may protest approval. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be in writing and filed with the Director at the following address: Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

The protest must be filed within 30 days of the Environmental Protection Agency's Federal Register publication of the Notice of Availability of the Final EIS. A protest must contain:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue(s) being protested.
- A statement of the part(s) of the plan being protected.
- A copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting individual, or an indication of the date the issue(s) were discussed for the record.
- A concise statement explaining why the State Director's proposed decision is believed to be wrong.

Supplementary Information: Copies of the Proposed RMP/Final EIS may be obtained at the following BLM offices: Richfield District Office, 150 East 900 North, Richfield, Utah 84701; Bureau of Land Management, Washington Office, 18th and C Streets NW., Washington, DC 20240; or Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111-2303.

Any comments and requests for further information on the proposed RMP/Final EIS received will be considered in the decision-making process, which will follow the Governor's consistency review and the comment/protest period. Comments should be addressed to: Wayne T. Kammerer Bureau of Land Management Richfield, UT 84701.

Donald L. Pendleton,

District Manager.

September 29, 1986.

[FR Doc. 86-22849 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DQ-M

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Carson City District Advisory Council.

DATE: November 18, 1986; 9:00 a.m.

ADDRESS: Palomino Valley Wild Horse and Burro Placement Center, 17800 Pyramid Highway, 18 miles north of Sparks, Nevada.

SUPPLEMENTARY INFORMATION: The agenda will include a tour and discussion of operations at Palomino Valley and discussion of the Carson City District's wild horse and burro management program. The public is welcome to attend and address the Council at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, Public Affairs Officer, BLM, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882-1631.

October 3, 1986.

Norman L. Murray,

District Manager.

[FR Doc. 86-22954 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-86-4131-01]

Meeting of the Craig, CO, Advisory Council

In accordance of Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on November 12, 1986, at 10 a.m. at the Craig District Office, 455 Emerson St., Craig, CO.

Agenda items will include:

1. An update on the Wolf Ridge Corporation EIS.
2. Effects of oil shale mining claims on grazing leases in Piceance Basin.

The meeting will be open to the public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Dated: October 2, 1986.

William J. Pulford,

District Manager.

[FR Doc. 86-22950 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-JB-M

[OR-050-4322-01:GP7-2]

Oregon; Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the

Prineville District Grazing Advisory Board to be held November 6, 1986.

The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the following items:

1. Election of officers
2. Brothers Planning Area Rangeland Program Summary
3. Brothers/LaPine Resource Management Plan Grazing Issues
4. Expenditure of Range Betterment (8100) funds
5. Coordinated Riparian Management Demonstration Area

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address, prior to November 1.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: October 1, 1986.

Donald L. Smith,

Acting District Manager.

[FR Doc. 86-22850 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-4410-04]

Advisory Council Meeting; Ukiah, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR Part 1780, the Ukiah District Advisory Council will meet to discuss the Draft Arcata Resource Management Plan which involves public lands in northwestern California.

DATES: The meeting will begin at 1:00 p.m. Thursday, 13, November 1986 and will adjourn at Noon Friday, November 14, 1986.

ADDRESS: The meeting will be held at the BLM Arcata Resource Area Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: Public lands included in the Arcata Resource Management Plan are located primarily in Mendocino and Humboldt counties (excluding the King Range National Conservation Area), with small tracts in Del Norte, Trinity, and Sonoma counties.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:00 a.m. Friday, November 14. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: October 3, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86-22949 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-JB-M

[CA-910-06-7122-10-1018; CA 18882]

Exchange of Public and Private Lands, Imperial and Riverside Counties, CA

Correction

In FR Doc. 86-16139, beginning on page 25952 in the issue of Thursday, July 17, 1986, make the following correction:

On page 25953, first column, in the land description for San Bernardino Meridian, CA, second line, "W ¼" should read "SW¼".

BILLING CODE 1505-01-M

[UT-060-06-4212-14; U-54739]

Sale of Public Land in Carbon County, UT

September 30, 1986.

AGENCY: Bureau of Land management, Interior.

ACTION: Notice of realty action, U-54739, sale of public land in Carbon County, Utah.

SUMMARY: The following described parcel of public land has been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1712) using direct sale procedures (43 CFR 2711.3-3(a)(4). Sale will be at no less than the appraised fair market value of $2,000.

Salt Lake Meridian, Utah

T. 12 S., R. 11 E.,
Sec. 35: SE¼SW¼.
The described land aggregates 40 acres.

The land is being offered as a direct sale to Mr. Funnon Shimmin, Price, Utah, an adjoining private land owner in accordance with 43 CFR 2711.3-3(a)(4). There is no legal or physical access to the public land parcel. The land will not be offered for sale until at least sixty (60) days after publication of this notice.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, Federal oil and gas lease U-50361.

Sale Procedures: If the identified parcel is not sold it will remain available for sale over the counter until sold or withdrawn from the market. Sealed bids will be accepted at the Price River Resource Area office during regular business hours, 7:45 a.m. to 4:30 p.m. MST. Sealed bids will be opened the second and last Tuesday of each month at 11:00 a.m.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will

become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land and the terms and conditions of the sale may be obtained from Mark A. Mackiewicz, Area Realty Specialist, Price River Resource Area Office, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, 82 East Dogwood, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259–6111..

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 86–22851 Filed 10–8–86; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-06-4212-14; U-52806, U-52807]

Sale of Public Land in Emery County, UT

September 30, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U–52806, U–52807, sale of public land in Emery County, Utah

SUMMARY: The following described parcels of public land have been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, have been found suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using the direct sale procedures (43 CFR 2711.3–3) for U–52807 and competitive bidding procedures (43 CFR 2711.3–1) for U–52806. Sale will be at no less than the appraised fair market value. Bids at less than such value will be rejected as required by FLPMA.

Parcel	Legal description	Acreage	Value
Sale Lake Meridian, Utah. U–52806	T. 19 S., R. 8 E., Sec. 3, SE¼SE¼.	40	$6,000
Sale Lake Meridian, Utah. U–52807	T. 19 S., R. 8 E., Sec. 11, SE¼SE¼, Sec. 12, SW¼SW¼.	80	8,000

Parcel U–52807 is being offered as a direct sale to Mrs. Neva Jensen, Castle Dale, Utah, sole adjoining private land owner in accordance with 43 CFR 2711.3–3(a)(4). There is no physical access to the public land parcel. The land will not be offered for sale until at least sixty (60) days after publication of this notice.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale here:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights of record include, but are not limited to, Federal oil and gas lease U–43767 and Emery County Road 4–21 claimed under R.S. 2477.

Sale Procedures: Sealed bids for Parcel U–52806 will be accepted at the San Rafael Resource Area Office, PO Drawer AB, 900 North 7th East, Price, Utah 84501, until 11:00 a.m. on January 20, 1987, at which time the bids will be opened. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The oral bidding, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared. If not sold, the parcel will remain available for sale over the counter on a first come basis until June 16, 1987.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land, terms and conditions of sale and bidding instructions may be obtained from Laurelle Hughes Area Realty Specialist, San Rafael Resource Area Office, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532 (801) 259–6111.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 86–22852 Filed 10–8–86; 8:45 am]

BILLING CODE 4310-10-M

[AZ-942-07-4520-12]

Survey Plat Filing; Arizona

October 2, 1986.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, P.O. Box 16563, Phoenix, Arizona, on the dates indicated:

A plat (in 5 sheets) representing a dependent resurvey of portions of the north boundary, east and south boundaries, and portions of the subdivisional lines, and a survey of subdivisions in certain sections and metes-and-bounds surveys in sections 28, 32, and 35, Township 12 North, Range 18 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1986, and was officially filed August 26, 1986.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest Office.

A plat representing a dependent resurvey of the north boundary, a portion of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines of Township 12 North, Range 20 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1986, and was officially filed August 26, 1986.

A supplemental plat showing a subdivision of original lot 2, section 18, Township 16 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted September 22, 1986, and was officially filed September 25, 1986.

These plats were prepared at the request of the U.S. Forest Service, Region 3.

A supplemental plat showing amended lottings in sections 4 and 9,

Township 13 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 3917 in sections 12, 13, and 14, Township 13 North, Range 1½ East, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings in section 31, Township 14 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings in sections 7 and 18, Township 15 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

A supplemental plat showing amended lottings in sections 12, 13, and 14, Township 15 North, Range 8 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey Nos. 3741 and 3742, in section 21, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings in section 22, Township 20 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted September 22, 1986, and was officially filed September 25, 1986.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Lands and Mineral Operations.

2. These plats will immediately become the basic records for describing the land for authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22943 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-32-M

Survey Plat Filing; Nevada

October 2, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey and order providing for opening of land.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective as listed below in notice.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on November 24, 1986.

Mount Diablo Meridian, Nevada

T. 40 N., R. 20 E.

The land ranges from about 5,600 to 6,300 ft. above sea level, and is gently rolling to mountainous. The soil varies from sandy clay to rocky. The vegetation consists of sagebrush, greasewood, rabbitbrush and native grass. There is scattered juniper in the southwest portion of the township.

Boulder Reservoir is located in section 33, and Boulder Creek, flows northwesterly from there through the township.

A power line runs north northwesterly through the east two tiers of sections, entering the township on the east boundary of sec. 36 and leaving on the north boundary of sec. 2.

Prinicipal users of the area are cattlemen and access into the township is provided by Nevada State Route No. 34, and numerous other improved and unimproved desert trail roads.

No mineral formations of consequence were noted during the survey.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on November 24, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 26, 1986.

T. 39 N., R. 61 E.
Supplemental Plat.

These surveys were executed to meet certain administrative needs of this Bureau.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-22948 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-HC-M

Survey Plat Filing; New Mexico

October 2, 1986.

The plat of survey, in three sheets, described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 2, 1986.

A survey representing the dependent resurvey of portions of the north and south boundaries of the Santa Cruz Grant, a portion of the Fifth Standard Paralled North, portions of the subdivisional lines, portions of the subdivision of section lines, certain small holding claim boundaries, and certain lot boundaries, and the survey of certain lots in sections 1, 4, 5, 8, and 18, Township 20 North, Range 9 East, New Mexico Principal Meridian, New Mexico, under Group 781.

This survey was requested by the Albuquerque District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22951 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-FB-M

Survey Plat Filing; New Mexico

October 2, 1986.

The plat of survey, in three sheets, described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 2, 1986.

A survey representing the survey of the north and west boundaries and the subdivisional lines of Township 22 North, Range 17 West, New Mexico

Principal Meridian, New Mexico, under Group 833.

This survey was requested by the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22952 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-FB-M

Survey Plat Filing; New Mexico

October 1, 1986.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 1, 1986.

The supplemental plat showing lot 93 in section 2, Township 2 South, Range 1 West, of the New Mexico Principal Merician, New Mexico, was approved September 5, 1986, under Group 768.

The survey was requested by the District Manager, Las Cruces, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22953 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Record of Decision to Adopt the Hawaiian Islands National Wildlife Refuge Master Plan Environmental Impact Statement (FES #86/11)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Record of decision (ROD).

SUMMARY: The U.S. Fish and Wildlife Service (FWS) has decided to adopt a comprehensive management plan for the Hawaiian Islands National Wildlife Refuge (HINWR). This plan will guide future management, development and use to the refuge for the next 10 to 20 years. The Preferred Alternative (PA) of the Final Master Plan/Environmental Impact Statement (EIS) **Federal Register** Notice of Availability of Final EIS, July 8, 1986) has been selected for implementation upon signature of this ROD.

Adoption and implementation of any of the considered alternatives would promote conservation of the six species of endangered or threatened wildlife addressed in this Master Plan/EIS. Furthermore, the National Marine Fisheries Service (NMFS) conducted a separate biological consultation under section 7 of the Endangered Species Act and concluded that implementation of the PA is not likely to jeopardize the continued existence of the Hawaiian monk seal or the Hawaiian green sea turtle.

The FWS has concluded that the PA is superior to any other alternative considered and is the best course of action to manage the Hawaiian Islands National Wildlife Refuge for the next 10–20 years.

The Preferred Alternative (PA) places strong emphasis on protecting and enhancing fish and wildlife values of the HINWR. Continuing efforts would go into research and management efforts intended to recover endangered and threatened species. Monitoring of wildlife populations and their habitats would continue to receive high priority. Seabirds would be the primary focus of attention, but endemic marine and terrestrial species would not be ignored, as changes in distribution and abundance of these species are key biological indicators of ecosystem changes.

While access to the refuge would continue to be restricted through a permit system, human activity levels on and around the refuge would likely increase beyond current levels. The continuing high priority efforts devoted to wildlife research and monitoring activities would mean the influx of greater numbers of researchers and agency staff personnel to Tern Island. Archaeologists and historians would be included in this influx, but their activities would be directed at studying the cultural resources on Nihoa and Necker Islands. Public use on the refuge would also likely see increases over the next 10–20 years, as demand for directly experiencing the unique resources of the refuge increases. While the Preferred Alternative would seek to enhance public awareness of refuge resources primarily through off-site activities, limited, supervised and strictly controlled on-site opportunities would also be provided to accommodate wildlife photographers, wildlife journalists and wildlife enthusiasts interested in nature tours.

The PA would support the State's current proposal to moor a mothership at French Frigate Shoals, just outside the refuge boundary. The mothership would provide a support base for a fleet of catcher vessels which would fish for several commercially important fish and shellfish species. Under the PA, the FWS would continue to provide emergency logistical support to the multi-species fishery. Related to the support for the commercial fishing industry, the PA includes a number of strategies designed to monitor support activities to ensure they remain compatible with refuge objectives over time.

With the increases in levels of human activity in and around the HINWR, the risks to wildlife resources would also increase. To reduce those risks to an acceptable level, the FWS would place increased emphasis on ensuring that all research and staff personnel take adequate precautions to ensure they are not unwitting carriers of exotic organisms which could devastate native floral and faunal communities. Increased efforts would also be directed toward regulating and monitoring nearshore vessel traffic to minimize the risks of accidental groundings, oil spills or spills of hazardous materials. Finally, the PA calls for the FWS to develop procedures for carefully monitoring research activities, the commerical fishing industry, nature tours and other human activities that would be permitted under the PA, for possible adverse effects on wildlife. The basic concept would involve the development of monitoring systems sufficiently sensitive to detect at an early stage any harmful disruptions to the ecosystem. Corrective actions would be implemented quickly if the full cooperation of federal and state government agencies and private parties, could be secured. The PA would seek to create the level of public and private sector cooperation that would be required to successfully implement this alternative.

Implementation of the PA will not be realized without a significant price tag. It is estimated that annual operation and maintenance (O&M) costs of the PA would double current O&M costs of $305,000 and development costs could range from $2 to $4 million. The O&M cost increase reflects primarily the increased research and eduction initiatives contained in the PA. Development costs are primarily related to rehabilitation of the deteriorated sheet pile sea wall that protects tern Island. Cost-sharing arrangements for the operation of the Tern Island facility could reduce FWS costs, as could the role of mothership-supported fishing vessels willing to facilitate refuge

research projects. National budget concerns with deficits will require ongoing re-evaluations of the PA and associated costs. Funding constraints may well curtail implementation of the PA.

FOR FURTHER INFORMATION CONTACT: Richard C. Wass, Refuge Manager, Hawaiian Islands National Wildlife Refuge, 300 Ala Moana Boulevard, Room 5302, P.O. Box 50167, Honolulu, HI 96850, 808-546-5608.

SUPPLEMENTARY INFORMATION:

Alternatives Considered

In developing management alternatives for the HINWR, the FWS considered a broad range of demands for human utilization of the natural and cultural resources of the HINWR while planning for the protection and preservation of those resources. The result of this effort is an array of management alternatives that varies in emphasis toward resource preservation or resource utilization. In all, five different management alternatives were considered for the HINWR. The following is a brief discussion of each alternative.

1. No Action Alternative

The No Action Alternative (NAA) is essentially management of the refuge as it presently exists. ("No Action" refers to "no change" from current management direction or intensity.) The description of the "present course of action" is needed to provide a reference point from which to compare and evaluate environmental effects of other alternatives under consideration. The NAA includes a number of strategies intended to enhance populations of threatened, endangered, and sensitive species as well as other fish and wildlife species such as seabirds. Research and monitoring would continue under the NAA. Limited off-refuge environmental education and interpretation would be provided, as would limited logistical support for commercial fishery operations (radio support, use of emergency mooring buoy, medical assistance, etc.). In documenting the NAA, it became apparent that current management falls short of accomplishing all refuge objectives at a minimally acceptable level. This is primarily due to insufficient human and financial resources. The primary areas where the NAA (present management) fails to meet objectives is in securing additional layers of protection for refuge resources and in environmental education and interpretation.

2. Baseline Alternative

The Baseline Alternative (BA) includes management strategies needed to address each of the refuge objectives at a minimally acceptable level. As the BA addresses the full range of refuge objectives, it is clearly a multiple-use alternative. It seeks to create a balance between resource preservation and resource utilization needs. The BA builds on the NAA, adding various management strategies to minimally satisfy refuge objectives.

3. Resource Preservation Alternative

This alternative includes additional strategies beyond those included in the Baseline Alternative, which would further address refuge objectives. Just as the strategies in the Baseline Alternative could be considered "must do" strategies to minimally satisfy refuge objectives, it was possible to portray "enhancement" alternatives that emphasize either reosurce preservation or resource utilization. The Resource Preservation Alternative (RPA) is one such enhancement alternative that contains strategies directed toward an even greater degree of fish and wildlife preservation.

4. Resource Utilization Alternative

The Resource Utilization Alternative (RUA) is another enhancement alternative that goes beyond the NAA and BA and directs greater emphasis toward achieving education, recreational, and other public and economic use objectives.

5. Preferred Alternative

The Preferred Alternative (PA) is a hybrid alternative, drawing strategies from both the RPA and RUA. The Preferred Alternative represents the FWS' recommended action for the management of the HINWR.

Strategies contained in the BA, RPA, PA, and RUA satisfy refuge objectives to at least a minimally acceptable level. All of the alternatives are environmentally preferable.

Decision Factors

The five management alternatives for the HINWR were evaluated and commpared to each other using specific evaluation criteria. The source of these evaluation criteria were: (1) Comments and input obtained through extensive public involvement efforts; (2) Public and agency comment received on previous FWS comprehensive land use planning efforts; and (3) The knowledge and experience of the FWS' research and wildlife management personnel and that of other participating scientific agencies and organizations. The following evaluation criteria are among the most critical to this planning effort:

1. Ability to satisfy wildlife resource and public use objectives for the refuge—per six major categories:

a. Vulnerable Species (threatened, endangered, sensitive and candidate species).
b. Cultural Resources.
c. Seabirds.
d. Other Terrestrial/Marine Species.
e. Education/Interpretation.
f. Other Compatible Public Uses.

2. Cost to Implement Refuge Programs.
3. Degree of Risk to Wildlife Resources.
4. Administrative Practicality.
5. Responsiveness to Authorities, Mandates and Policies that Govern the Activities of the FWS (i.e. Treaties, Executive Orders, Federal Laws, State Laws, FWS Goals, etc.)
6. Public Comments.

The FWS' decision to adopt the PA is based on a comprehensive review of the FWS' Final Master Plan/EIS for the HINWR, as well as all other information and research associated with this subject. A Draft Master Plan/EIS was prepared in August 1984 and distributed to concerned citizens, agencies and organizations for review and comment. Local and regional libraries were provided copies of the document for public inspection. Public meetings were held to gather input from interested parties and to present the alternatives. Notice of Availability of the Draft Master Plan/EIS was published in the **Federal Register** on September 7, 1984. A Final Master Plan/EIS was prepared based on the draft document and comments received from citizens, agencies and organizations. Copies of the Final Master Plan/EIS have been distributed to the interested public. Additional copies are available through the Refuge Manger.

Mitigation

While access to the Refuge would continue to be restricted through a permit system, human activity levels on and around the Refuge would likely increase beyond current levels. The continuing high priority efforts devoted to wildlife research and monitoring activities will mean the influx of greater numbers of researchers and agency staff personnel to Tern Island. Archaeologists and historians will be included in this influx, but their activities will be directed at studying the cultural resources on Nihoa and Necker Islands. Public use on the Refuge will also likely see increases over the next 10-20 years,

as demand increases for directly experiencing the unique resources of the Refuge. While the Preferred Alternative would seek to enhance public awareness of Refuge resources primarily through off-site activities, limited, supervised on-site opportunities would also be provided as feasible to accommodate wildlife photographers, wildlife journalists, or wildlife enthusiasts interested in nature tours.

With the increases in levels of human activity in and around the HINWR, the risks to wildlife resources will also increase. To reduce those risks to an acceptable level, the FWS will place increased emphasis on ensuring that all research and staff personnel take adequate precautions to ensure they are not unwitting carriers of exotic organisms which could devastate native floral and faunal communities. Increased efforts will also be directed toward regulating and monitoring nearshore vessel traffic to minimize the risks of accidental groundings, oil spills, or spills of hazardous materials. Finally, the PA calls for the FWS to develop procedures for carefully monitoring research activities, the commercial fishing industry, nature tours, and other human activities for possible adverse effects on wildlife.

Copies of this ROD are being sent to agencies, organizations, and individuals who were sent copies of the EIS.

Dated: September 10, 1986.

Rolf L. Wallenstrom,

Regional Director, U.S. Department of the Interior, Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, OR 97232.

[FR Doc. 86-22942 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; San Diego Zoological Society, San Diego CA, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 711275

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import 1 male and 2 female Sumatran tigers *(Panthera tigris sumatrae)* from Kebun Kinatang Ragunan Zoological and Botanical Gardens, Jakarta, Indonesia for propagation purposes. These tigers will be included in a long term breeding program of the captive population to further increase propagation of this species in North America.

PRT 712139

Applicant: Hallett S. Ward, Waynesville, NC

The applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by Mr. L.U.D DeBruijn, Somerset East, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 712238

Applicant: Caldwell Schools, Inc., Tyler, TX

The applicant requests a permit to import six captive-born African hunting dogs *Lycaon pictus)* from the National Zoological Gardens of South Africa for breeding and exhibition.

PRT 711663

Applicant: Plants by Peg—Peg Spaete, Boring, OR

The applicant requests a permit to sell in interstate commerce artificially propagated specimens of the following cactus species: *Ancistrocactus tobuschii* (Tobusch fishhook), *Echinocereus fendleri* var. *kuenzleri* (Kuenzler hedgehog), and *E. viridiflorus* var. *davisii* (Davis green pitaya). This will serve to encourage artificial propagation and decrease the need for take of these species from the wild.

PRT 712295

Applicant: Gladys Porter Zoo, Brownsville, TX

The applicant requests a permit to import one male captive born Mueller's gibbon *(Hylobates mulleri)* from the Scottish National Zoological Park, Edinburgh, Scotland, for the purpose of captive breeding.

PRT 707226

Applicant: Robert H. Hanson, Greenwich, CT

The Applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 707224

Applicant: Arlene P. Hanson, Greenwich, CT

The Applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by F.W.M Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enahance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 712286

Applicant: International Animal Exchange, Ferndale, MI

The Applicant requests a permit to purchase in foreign commerce two female cheetahs *(Acinonyx jubatus)* from Mr. Helga Delfs, Windhoek, Namibia (Southwest Africa) to sell in foreign commerce and ship to the Taipei Municipal Zoo in Taipei, Taiwan. The applicant contends that these cheetahs will be used for captive breeding and unspecified conservation education activities, thereby enhancing the survival of the species. Taiwan is not a party to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES).

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 6, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-22960 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has

submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8140, Block A-101, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on September 30, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 1, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-22853 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Revenues, Expense & Statistics
OMB Form No.: 3120-0022
Agency Form No.: QPA
Frequency: Quarterly—Annually
Respondents: Class I Motor Carrier of Passengers
No. of Respondents: 60
Total Burden Hrs.: 1,440

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Condensed Balance Sheet
OMB Form No.: 3120-0063
Agency Form No.: CBS
Frequency: Quarterly—Annually
Respondents: Class I Railroads
No. of Respondents: 25
Total Burden Hrs.: 600.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22879 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget.

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Designation of Agents—Motor Carriers & Brokers
OMB Form No.: 3120-0008
Agency Form No.: BOC-3
Frequency: On occasion
Respondents: Motor Carrier & Brokers
No. of Respondents: 6,000
Total Burden Hrs.: 1,500

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Motor Carrier Bodily Injury & Property Damage Liability Certificate of Insurance
OMB Form No.: 3120-0103
Agency Form No.: BMC-91X
Frequency: On occasion
Respondents: Regulated transportation companies
No. of Respondents: 25,000
Total Burdens Hrs.: 6,250

Type of Clearance: Extension
Bureau/Office: Office of Public Assistance
Title of Form: Profile of Minority & Female-owned Motor Carrier and Identification of Minority & Female-owned Motor Carriers
OMB Form No.: 3120-0050
Agency Form No.: OPA 81-1 & OPA 81-2
Frequency: Annual/Biennially
Respondents: Minority & Female Owned Motor Carriers
No. of Respondents: 36
Total Burden Hrs.: 9.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22880 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30908]

Carolina Rail Services, Inc.; Exemption for Acquisition and Operations and Trackage Rights

Carolina Rail Services, Inc., has filed a notice of exemption to acquire the terminal switching operations and certain trackage rights over a line of the North Carolina Ports Railway Commission, an agency of the State of North Carolina, between the former Atlantic & East Carolina mileposts 94.1 (Western boundary) and 94.5 (Eastern boundary.) Any comments must be filed with the Commission and served on Mr. Michael A. Nemeroff at Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 26, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22882 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30916]

Washington Central Railroad Co., Inc.; Exemption for Acquisition and Operation.

Washington Central Railroad Company, Inc. (WRC) has filed a notice of exemption to acquire and operate 433 miles of rail line of the Burlington Northern Railroad Company (BN) as follows: From Milepost 1.70 at SP&S Junction, to Milepost 102.6 at East Auburn; from Milepost 186.9 at Connell, to Milepost 1976.0 at Warden; from Milepost 0.0 at Warden, to Milepost 1989.0 at Othello; from Milepost 1976.0 at Warden, to Milepost 0.0 at Basset Junction; from Milepost 0.0 at Basset Junction, to Milepost 12.5 at Schrag; from Milepost 0.0 at Basset Junction, to Milepost 20.0 at Moses Lake; from Milepost 0.0 at Wheeler, to Milepost 20.0 at Moses Lake; from Milepost 13.9 at Kennewick, to Milepost 5.5 at Hanford Works; from Milepost 34.3 at Gibbon, to Milepost 62.6 at Granger; from Milepost 0.0 at Toppenish, to Milepost 18.9 at White Swan; from Milepost 0.0 at Yakima, to Milepost 8.7 at Moxee City; from Milepost 0.0 at Yakima, to Milepost 13.1 at Naches; and from Milepost 0.0 at Palmer Junction, to Milepost 13.1 at Veazey, all in the State of Washington. Any comments must be filed with the Commission and served on: R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC, 20005–4797, (202) 628–2000 and Lawrence Stroik, Assistant General Solicitor, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, (817) 878–2373. This transaction will also involve the issuance of securities by WRC which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1 (51 FR 4928 (February 10, 1986)).

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 29, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22883 Filed 10–8–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30910]

Wilimington Terminal Railroad, Inc.; Operation Exemption

Wilmington Terminal Railroad, Inc. has filed a notice of exemption to operate approximately 3 miles of railroad line in the Wilmington, NC port terminal area, pursuant to a lease agreement with the North Carolina Ports Railway Commission. Any comments must be filed with the Commission and served on Donald G. Avery or Kelvin J. Dowd, 1224 17th Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22884 Filed 10–8–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Depatment issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Application for BLS Occupational Safety and Health Statistics Grants 1220–0067; BLS 424A, BLS 424B, BLS 424C, BLS 424D. SF–424 is a GSA burden.

Annually
State or local governments
48 responses; 384 hours; 4 forms

The BLS Occupational Safety and Health Statistical Grant Program makes grants to the States to assist them in developing and administering programs dealing with occupational safety and health statistics and to arrange through these grants for research to further the objectives of the Occupational Safety and Health Act.

Pension and Welfare Benefits Administration

Employee Benefit Plan Annual Report (Form 5500 Series) 1210–0016.

Annually

Businesses or other for-profit; Non-profit institutions; Small businesses or organization
900,000 responses; 714,561 hours, 3 forms

Section 104(a)(1)(A) of ERISA requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement.

Extension

Bureau of Labor Statistics

Permanent Mass Layoff and Plant Closing Program
Reports 1–3 and Supplemental Employer Information Report 1220–0090, BLS 428
Quarterly
State or local governments: businesses or other for-profit; Federal agencies or employees; non-profit institutions
15,504 responses; 168,055 hours; 4 forms

Section 462(e) of the Job Training Partnership Act states that the Secretary of Labor develop and maintain statistical data on permanent mass layoffs and plant closings, and publish a report annually. These data will be used to study the cases and effects of worker dislocations.

Employment Standards Administration

Operator Controversion; Operator Response
1215–0058; CM–970 and CM–970a
On occasion
Businesses or other for-profit; small businesses or organizations
10,000 responses; 2,500 hrs.; 2 forms

The forms are used by most operators to controvert an initial finding or to agree or disagree with potential liability for payment of black lung benefits under the Act.

OWCP Representative Fee Request
1215–0078; CA–38; CM–972
As needed
Businesses or other for-profit; small businesses or organizations
15,600 responses; 10,672 hrs.; 1 form
Request for approval of a fee for services provided OWCP claimant/beneficiaries submitted by attorney/representative.

Bona Fide Thrift or Savings Plan (20 CFR Part 547)
1215–0119
Recordkeeping
Businesses or other for profit; small businesses or organizations
468,000 recordkeepers; 3 hours

The Wage and Hour Division requires enterprises engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods that have been moved in or produced in such commerce by any person, to maintain documentation establishing a bona fide savings or thrift plan.

Bona Fide Profit-Sharing Plan or Trust (20 CFR Part 549; Disclosure Requirement (29 CFR 549.1(d) (2))
1215–0122
Recordkeeping
Businesses or other for-profit; Small businesses or organizations
546,000 recordkeepers; 3 hours

Wage and Hour Division requires enterprises having workers engaged in interstate commerce, production goods for sale in interstate commerce, or handling, selling, or otherwise working on goods that have been moved in or produced for such commerce by any person, to maintain documentation establishing "bona fide" nature of plan.

1215–0124; CM–200
Recordkeeping requirement
Businesses or other for-profit
185 recordkeepers; 1 hour

CFR 725.531 required self-insured operators or insurance carriers who make benefit payments to black lung beneficiaries to maintain receipts for those payments for five years. Cancelled checks will suffice.

Rehabilitation Maintainance Certificate
1215–0161; OWCP–17
On occasion
Individuals or households; Federal agencies or employees; Small businesses or organizations
4,200 responses; 700 hours; 1 form

The form will serve as a bill submitted by the injured worker to OWCP requesting reimbursement of expenses incurred as a result of participation in an approved rehabilitation effort for the preceeding four week period.

Employment and Training Administration

Request for Additional UI Contingency Staffyears for the Quarter
1205–0169; ETA 2103
Quarterly
State or local governments
53 respondents; 212 hours; 1 form

Used by States to request additional funds for processing UI contingency workloads above the base.

Annual State WIN Plans
1205–0214; ETA 8480,8484, 8485, 8479
Annually
State or local governments
28 respondents; 2,156 burden hours; 4 forms

The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Grantee Planning and Reporting Forms for the Job Training Partnership Act, Title IV, sections 401 and 402
1205–0215; ETA 8600, 8602, 8604, 8596, 8598, 8601, 8603, 8595, 8599
Quarterly; Annually
State or local governments
3,716 respondents; 37,996 hours; 9 forms

These forms are used to manage the national programs authorized under sections 401 and 402 of the Job Training Partnership Act. These documents are the principal sources of programs plans and performance data. They form the basis for the award of funds, Federal oversight and reports to Congress.

Mine Safety and Health Administration
Notification of Legal Identity
1219–0008; MSHA Form 2000–7
On occasion
Businesses and other for profit; small businesses or organizations
10,000 respondents; 10,000 hours

Requires mine operators to file with MSHA the name and address of the mine and the name and address of the persons who control and operate the mine, and any revisions of such names and addresses. The information is used to identify persons chargeable with violations of safety and health standards, in the assessment of civil penalties, and in the service of legal documents.

Operations Under Water
1219–0020
On occasion
Businesses or other for profit; small businesses or organizations
30 respondents; 480 hours

Requires coal mine operators to obtain a permit to mine under a body of water, if in the judgement of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Application for Use of Nonpermissible Explosives and Nonpermissible Shot-Firing Units
1219–0025
On occasion
Businesses and other for profit; small businesses or organizations
50 respondents; 50 hours

Contains provisions by which a coal mine operator may apply for and be granted a permit to use nonpermissible explosives and nonpermissible shot-firing units.

Weekly Air Flow Measurements (30 CFR 57 21035)
1219–0031
Weekly
Businesses or other for profit

16 responses; 6,400 hours

The adequacy of the ventilation system for a gassy mine must be checked weekly to maintain a safe working environment. Quantitative measurements help assure dilution of gases and preclude the pressure of explosive atmosphere.

Fire Extinguishing and Abandonment Plans for Refuse Piles and Impoundments
1219–0074
On occasion
Businesses and other for profit; small businesses or organizations
35 respondents; 220 hours

Requires coal mine operators to submit to MSHA for approval fire extinguishing plans and abandonment plans for refuse piles and impounding structures.

Occupational Safety and Health Administration

Crane or Derrick Annual Inspection Record-Construction
1218–0113; OSHA 229
Recordkeeping
Businesses or other for profit; small businesses or organization
113,000 respondents; 218,090 hours; 0 forms

Construction employers are required to keep a record of the thorough annual inspection of hoisting machinery and each piece of equipment in order to assure timely replacement and service necessary for the safe use of the machinery.

Collection of Information in Current Rules

Occupational Safety and Health Administration

Asbestos (General Industry), OSHA 246
On Occasion
Businesses or other for profit; small businesses or organizations
286,607 responses; 227,427 hours; no forms

This regulation requires employers to train employees about the hazards of asbestos, to monitor employee exposure, to provide medical surveillance and to establish and maintain accurate records of employee exposure to asbestos. The standard applies to employers in general industry and maritime industries.

Signed at Washington, DC, this 3rd day of October, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–22875 Filed 10–8–86; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–74)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on International Relations in Space.

DATE AND TIME: October 27, 1986, 9 a.m. to 5 p.m.; October 28, 1986, 9 a.m. to 2 p.m..

ADDRESS: NASA Headquarters, Conference Room 7002, 400 Maryland Ave., SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn F.H. Cline, Code LID, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8452).

SUPPLEMENTARY INFORMATION: The Task Force on International Relations in Space of the NASA Advisory Council was established to provide advice and counsel to NASA on international cooperation and competition in space activities.

This meeting will be closed to the public from 1 p.m. to 2 p.m. on October 28, 1986 for a discussion of the qualifications of candidates for participation in the proposed study of international relations in space. such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(b)(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 60 persons, including Task Force members and other participants).

Type of Meeting: Open—except for a closed session as noted in the preceding paragraph and in the agenda below.

Agenda

October 27, 1986
9 a.m.—Welcome and Introduction.
9:30 a.m.—Status and International Aspects of the U.S. Space Program.
1 p.m.—Status and International Aspects of Other National Programs:
ESA and European National Programs.
Japan.
Soviet Union.
China.
Developing Countries.
3 p.m.—Other Considerations:
National Security.
Interplay and Impact of Export Controls.
NASA/DOD Relationship.
Commercialization/Private Sector Role.
October 28, 1986
9 a.m.—NASA's Approach to International Cooperation and New Trends in Foreign Capabilities/Alliances.
10 a.m.—U.S. Objectives in International Relations in Space.
10:30 a.m.—Initial Selection of Issues Task Force Should Address:
Discussion of Leadership.
Approach to International competition.
1 p.m.—Task Force Membership and Initial Organization of the Study (Closed Session).
2 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

October 2, 1986.

[FR Doc. 85–22863 Filed 10–8–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by October 27, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms Marianna Dunn, National

Endowment for the Arts, Administrative Services, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the approval of a current collection which has been revised. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) the OMB number, if applicable; (3) how often the required information must be reported; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to prepare the form. These entries are not subject to 44 U.S.C. 3504(h).

Title: Final Description Report Form for State and Regional Arts Agencies.
OMB Number: 3135-0034.
Purpose: Program evaluation, program planning or management.
Frequency of Collection: Annually
Respondents: State or local governments, non-profit institutions.
Use: Reported informtaion is needed and used for: 1) monitoring state and regional arts agency program activities; 2) planning for coordination of Endowment programs and activities with those of state and regional arts agencies; and 3) reporting to the Congress and the public on the use of funds awarded to the states and regions.
Estimated Number of Respondents: 63.
Estimated Hours for Respondents to Provide Information: 252.

Murray R. Welsh,
Director, Administrative Service Division, National Endowment for the Arts.

[FR Doc. 86-22798 Filed 10-8-86; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension; Extension.
2. The title of the information collection: Report of Proposed Activities in Non-Agreement States.
3. The form number if applicable: NRC Form 241.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Agreement State Licensees.
6. An estimate of the number of responses: 200.
7. An estimate of the total number of hours needed to complete the requirement of request: 50.
8. An indication of whether section 350(h), Pub. L. 96-511 applies: Not applicable.
9. ABSTRACT: NRC Form 241 informs NRC of locations and dates of activities conducted in non-Agreement States by Agreement State licensees under the general license of 10 CFR Part 150.20.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, DC. 20555

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this third day of October 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,
Director, Office of Administration.

[FR Doc. 86-22894 Filed 10-8-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-500]

Environmental Assessment and Finding of No Significant Impact; Carolina Power and Light Co., North Carolina Eastern Municipal Power Agency

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J, Section III.D.2(b) to 10 CFR Part 50 to Carolina Power and Light Company, and North Carolina Eastern Municipal Power Agency (the applicants), for the Shearon Harris Nuclear Power Plant, Unit No. 1, located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption from 10 CFR Part 50, Appendix J, Paragraph III.D.2(b) would allow the applicant to use an alternate method of testing the containment air locks in order to verify that containment integrity is maintained. The alternate method of testing proposed by the applicant is endorsed by the NRC in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452). This proposed action is responsive to the applicants' request for an exemption dated June 2, 1986.

The Need for the Proposed Action

The underlying purpose of Paragraph III.D.2(b) of Appendix J to 10 CFR Part 50 is to verify that containment integrity is maintained. This regulation details three explicit air lock testing requirements which are also required to be in the Technical Specifications. With one exception, Technical Specification 4.6.1.3.a, b.1 and b.2 correspond to the Appendix J requirements.

Technical Specification 4.6.1.3.b.1 requires that the containment air locks be domonstrated operable by conducting a leakage test every six months, when containment integrity is required, by pressurizing the interior of the air lock to P_a (the calculated peak containment internal pressure under design basis accident conditions, 41 psig for the Shearon Harris Nuclear Power Plant) and verifying that the leakage rate is within the limit specified in the Technical Specifications. This is in compliance with 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i).

Paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 requires air locks to be tested within three days after being opened (or at least once every three days when the air lock is being used and more frequent for multiple entries every three days) and specifies that air lock seal tests satisfy the three day test requirements. Technical Specification 4.6.1.3.a corresponds to and complies with this requirement of Appendix J.

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 requires that "Air locks opened during periods when containment integrity is not required by the plant's Technical Specification shall be tested at the end of such periods at not less than P_a." In lieu of this requirement, Technical Specification 4.6.1.3.b.2 requires that an overall air lock leakage test be conducted at P_a when maintenance has been performed on the air lock that could affect the air lock sealing capability. The Standard Technical Specifications contain a footnote stating that this requirement is an exemption to Appendix J of 10 CFR Part 50.

The periodic six month test of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 and the three day test

requirement of paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 provide assurance that the air lock is properly engaged and sealed. When no maintenance has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed, there should be no reason to expect the air lock to leak excessively just because it has been opened during cold shutdowns and refueling outages. Whenever maintenance that could affect the sealing capability has been performed, the test will still be required. Therefore, the potential for leakage would not change nor increase if the test is only performed after maintenance has been performed on the air lock that could affect its sealing capability. An exemption from paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is requested since the present Technical Specifications provide equivalent protection of containment integrity. The Commission has granted this exemption on other plants with designs similar to the Shearon Harris Nuclear Power Plant and it is consistent with current regulatory practice and policy.

Environmental Impacts of the Proposed Action

The proposed exemption would permit the substitution of an air lock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure air lock test otherwise required by Paragraph III.D.2(b)(ii) when the air lock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by Paragraph III.D.2(b) (i) and (iii) are current, with no maintenance having been performed on the air lock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The principal alternative to the proposed action would be to deny the requested exemption. Such an action would require the applicant to use a cumbersome and unwarranted test method, or a major design change would be required in order to permit the inner door to withstand full containment pressure in the test direction without strong backs. If design changes were warranted, a corresponding delay in commercial operation of the Shearon Harris Nuclear Power Plant would be required, and this delay would cause the cost of the unit to increase by a significant amount.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Shearon Harris Nuclear Power Plant, dated October 1983.

Agencies and Persons Consulted

The NRC staff did not consult with any other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated June 2, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Wake County Public Library, 104 Fayetteville Street, Raleigh, North Carolina 27601.

Dated at Bethesda, Maryland, this 6th day of October 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22895 Filed 10-8-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In FR Doc. 86-21528 beginning on page 33938 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33965, in the first column, the amendment for South Carolina Electric and Gas Company was omitted and should be inserted between the amendments for Omaha Public Power District and Southern California Edison Company, et al., as follows:

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 7, 1986.

Brief description of amendment: The amendment revises Technical Specification 3/4.4.9, "Pressure Temperature Limits—Reactor Coolant System" and its Bases and changes the withdrawal order and schedule for the reactor vessel specimen capsules, as well as the plant heatup and cooldown rates.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment No. 53.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12239). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

BILLING CODE 1505-01-M

POSTAL SERVICE

Implementation of Change In The Domestic Mail Classification Schedule Provision Regarding Bulk Third-Class Five-Digit Presort Mail

AGENCY: Postal Service.

ACTION: Notice of implementation of a change in the domestic mail classification schedule provision regarding bulk third-class five-digit presort mail.

SUMMARY: This gives notice that effective 12:01 a.m. October 9, 1986, the Postal Service will implement a change in the Domestic Mail Classification Schedule that will eliminate the requirement that bulk third-class five-digit presort mail be prepared "so as to avoid handling of individual pieces or packages until they reach the five-digit ZIP Code delivery unit" and substitute the requirement that such mail be prepared "so as to avoid handling of individual pieces prior to incoming secondary distribution."

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: William T. Alvis, (202) 268-2982.

SUPPLEMENTARY INFORMATION: On December 26, 1985, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending section 300.0231 of the Domestic Mail Classification Schedule. The Postal Service proposed that the requirement that bulk third-class five-digit presort mail be prepared "so as to avoid handling individual pieces or packages until they reach the five-digit ZIP Code delivery unit" be deleted from section 300.0231. As amended, the section would read as follows:

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presort mail prepared in accordance with USPS regulations.

Notice of the Postal Service's Request and its proposal was published by the Postal Rate Commission in the **Federal Register** on January 8, 1986 (51 FR 795). The Postal Service's proposal was implemented on a temporary basis on April 20, 1986. 51 FR 12409 (1986). The temporary change expires on October 9, 1986, as provided in 39 U.S.C. 3641(e).

On September 9, 1986, the Postal Rate Commission issued its Recommended Decision on the Request. The Commission recommended that section 300.0231 be amended by substituting the words "so as to avoid handling of individual pieces prior to incoming secondary distribution" for the words "so as to avoid handling individual pieces or packages until they reach the five-digit ZIP Code delivery unit" so that the section would read as follows:

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces prior to incoming secondary distribution.

On October 7, 1986, the Governors of the Postal Service, pursuant to 39 U.S.C. 3625(b), approved the Commission's Recommended Decision and ordered it into effect. By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C. 3625(f), set the effective date of the change at 12:01 a.m. October 9, 1986. Resolution No. 86-17 (October 7, 1986). Accordingly, the change in section 300.0231 of the Domestic Mail Classification Schedule set forth above shall take effect at 12:01 a.m. on October 9, 1986.

(39 U.S.C. 3625)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-22915 Filed 10-8-86; 8:45 am]

BILLING CODE 7710-12-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan #2251; Amdt. 1]

Disaster Loan Areas; Michigan

The above-numbered Declaration (51 FR 34517), issued in accordance with the President's declaration of September 18, 1986, is hereby amended in accordance with an amendment from the Federal Emergency Management Agency, dated September 30, 1986, to include Van Buren County and the adjacent Counties of Manistee, Shiawasee and Lapeer due to severe storms and flooding beginning on or about September 10, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close or business on November 17, 1986, and for economic injury until the close of business on June 18, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 3, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-22911 Filed 10-8-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1012]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 30, 1986 at 9:30 a.m. in Conference Room B841, Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to continue the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 647-2592.

Dated: September 26, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-22913 Filed 10-8-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1011]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, October 30, 1986 in Room 1105, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 1:30 p.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to:

a. Discuss and adopt U.S. positions to upcoming CCITT Study Group PC-WATTC-88;

b. Formulate an Ad Hoc Group to examine general policy issues relating to international telecommunications matters.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In the regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advice the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-6700. All attendees must use the C Steet entrance to the building.

Dated: September 26, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-22914 Filed 10-8-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1010]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, October 23, 1986 at 9:30 a.m. in Room 1408, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting is final preparations for the upcoming meeting of PC-WATTC, to be held in Geneva, December 1986.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: September 17, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-22869 Filed 10-8-86;

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Order 86-10-8]

Applications of MBA Airlines, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 86-10-8) Dockets 43570 and 43572.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders granting MBA Airlines, Inc., certificates to engage in domestic all-cargo air service, and foreign scheduled air transportation of property and mail.

DATE: Persons wishing to file objections should do so no later than October 24, 1986.

ADDRESS: Responses should be filed in Dockets 43570 and 43572 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Special Authorities Division (P-47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 (202) 366-2342.

Dated: October 3, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-22899 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Hayward, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Hayward, Alameda County, California.

FOR FURTHER INFORMATION CONTACT: D.L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of Hayward will prepare an Environmental Impact Statement (EIS) on a proposal to construct a section of Route 238 on a new alignment from near Industrial Parkway to Interstate 580 in the City of Hayward. The limits of the project are P.M. 9.3 to 14.7. The new facility will alleviate traffic congestion in the central business district of Hayward. A number of alternatives are under consideration to accomplish the goals of the proposed action. These alternatives include a six lane expressway, a six lane access controlled grade separated facility, a combination expressway/freeway, a Transportation System Management (TSM) option, and the "do nothing" alternative.

Route 238 has been reduced in scope from a full eight-lane freeway to the current limited alternatives by a lack of funding and the involvement of the public and several agencies. In 1978 the Metropolitan Transportation Commission (MTC) reviewed its Regional Transportaion Plan to delete proposals for the project portion south of Hayward and to consider using previously purchased unneeded right of way to finance an expressway instead of a freeway. The California Transportation Commission gave MTC and the City of Hayward two years to prepare a financial plan to fund the project. A local alternative transportation improvement program was completed in 1984 that established a partnership between Caltrans and the City of Hayward to develop the Route 238 proposal.

In February, 1986 Caltrans and the City of Hayward held a public information meeting to announce the commencement of studies and the scoping of the project for the Route 238 corridor. Written comments are also currently being solicited through additional written notices to public agencies to provide further input to the scoping process. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified comments and suggestions are invited from all interested parties. Comments or suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

D.L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 86-22956 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monterey County, CA.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O.

Box 1915, Sacramento, CA 95809
Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to rehabilitate the existing highway and widen for paven shoulders on Route 1 from 0.2 mile north to 1.5 miles north of the Juan Higuera Creek Bridge in Big Sur, Monterey County. The project is necessary to maintain the existing roadway and provide paved shoulders to improve safety. Five trees, which are immediately adjacent to the existing roadway, would be removed as part of the proposed project. Three of the trees show the scars of vehicular collisions.

Alternatives under consideration: (1) Rehabilitate the roadway and provide paved shoulders for a roadway width of 28 feet; (2) No Build-project would be limited to the rehabilitation of only the existing roadway.

Alternatives considered but rejected: Federal Standard Alternative—Federal standards for rehabilitation projects on Route 1 in this area call for a minimum roadway width of 36 feet. This alternative was considered but rejected because it would require the removal of a significant number of trees along the existing Route 1, a designated State Scenic Highway.

Route Concept Study Alternative—The Route Concept Study, prepared by the California Department of Transportation for this section of Route 1, calls for a roadway width of 32 feet, where feasible. This alternative was considered but rejected because it would require the removal of a significant number of trees along the existing Route 1, a designated State Scenic Highway.

This project was initially proposed as a Categorical Exclusion to the National Environmental Policy Act. The project was approved by the Federal Highway Administration and the California Coastal Commission approved a coastal permit for the proposed project at a public hearing in September, 1985. Public controversy developed over the proposed removal of trees, and the Federal Highway Administration agreed to prepare an EIS for the proposed project. A public informational meeting is scheduled for 4:00 P.M. on Thursday, October 2, 1986, at the Grange Hall in Big Sur.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on October 1, 1986.

J.R. Schultz,

Acting District Engineer, Sacramento, California.

[FR Doc. 86-22854 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemptions from the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition of exemption.

SUMMARY: This notice grants the petition by BMW of North America, Inc., for an exemption from the marking requirements of the vehicle theft prevention standard for the BMW Carline 7 passenger car line for model year 1988, pursuant to section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on these lines as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard. This determination is not premised on the existence of the double-lock aspect of the central locking system since that aspect is the subject of BMW's outstanding request for interpretation of Federal Motor Vehicle Safety Standard No. 206, *Door Locks and Door Retention Components*, and since the BMW antitheft device meets the criteria of section 605 and Part 543 without taking that aspect into consideration. The exemption will become effective beginning with the 1988 model year.

SUPPLEMENTARY INFORMATION: On June 6, 1986, this agency received a petition from BMW of North America, Inc., (BMW) for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petitions for Exemption from the Vehicle Theft Prevention Standard.* On January 7, 1986 (51 FR 715), NHTSA had published a notice of proposed rulemaking for the procedures to be followed by manufacturers in preparing and submitting petitions for model year 1988 and thereafter. These proposed procedures were identical to those adopted in the interim final rule (January 6, 1986, 51 FR 706) establishing the Part 543 requirements to be followed by manufacturers in preparing and submitting petitions for exemption during model year 1987. Section 605 of Title VI requires manufacturers to submit petitions not later than eight months before commencement of production of the vehicle line or lines for which exemption is sought. Therefore, BMW submitted its petition before publication of the final rule for the 1988 and subsequent model years.

In its petition, BMW requested an exemption for the Carline 7 passenger car line. The agency reviewed the material submitted by BMW and concluded that BMW met the requiremetns for petitions i Part 543.5, as of June 6, the date on which the BMW petition was received by the agency. Accordingly, the 120-day period for processing BMW's petition began on that date since, as provided by section 543.7, the processing of a petition is complete.

In its petition, BMW described an antitheft device which is activated by removing the key from the ignition, locking the driver's door and removing the key. These steps double lock the doors and activate the ignition/steering lock systems and a motion sensor, as well as the fuel and starter interrupt functions. They also arm an audible and visual alarm which is triggered by sensors in the doors, engine hood, trunk, and other locations.

The agency grants BMW's petition for exemption without regard to the existence of the double-locking aspect of the BMW system since that aspect is subject to BMW's outstanding request for interpretation regarding compliance with Federal Motor Vehicle Safety Standard No. 206, *Door Locks and Door Retention Components.* BMW's request for interpretation will be considered separately under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1391, *et seq.*). This exemption will become effective beginning with the 1988 model year.

The agency has determined, based on substantial evidence, that installation of BMW's device in the Carline 7 line is likely to be as effective as these lines' compliance with the parts marking requirements of Part 541 in reducing and deterring vehicle theft. This determination is based on the information submitted by BMW with its

petition and on other available information. It is not, however, based upon consideration of the double-locking aspects of BMW's device for the reason explained above. The agency believes that the device will provide the types of performance listed in § 543.6(a)(2), i.e., promote activation, attract attention to unauthorized entries, prevent defeating of circumventing of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device.

As required by section 605(b) of the statute and Part 543.6(b), the agency also finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce the deter theft. This conclusion is based on the information provided by BMW on its device. The agency notes that the methods of encouraging activation and preventing defeat in the BMW antitheft device are similar to the methods in other devices which the agency has considered effective. BMW stated in its petition that its antitheft device contains additional protective features, which BMW believes will result in its device reducing and deterring theft to at least the same extent as compliance with Part 541.

As an aside, the agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) provides that an exemption granted under Part 543 applies only to vehicles which are equipped with the antitheft device on which the exemption of the line including those vehicles was based. Further, section 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if BMW contemplates making any changes whose effects might be so characterized, it consult with the agency before undertaking to prepare and submit a modification petition.

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50.

Issued on: October 3, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-22893 Filed 10-6-86; 1:01 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 3, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be otained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0005
Form Number: ATF F 3210.1
Type of Review: Extension
Title: Application for Restoration of Firearms and/or Explosives Provileges

OMB Number: 1512-0037
Form Number: ATF F 5020.21
Type of Review: Extension
Title: Form Letter: Request for Arrest Record Check

OMB Number: 1512-0144
Form Number: ATF F 5100.12 (2736)
Type of Review: Extension
Title: Specific Transportation Bond-Distilled Spirits or Wines Withdrawn for Transportation or Manufacturing Bonded Warehouse Class Six

OMB Number: 1512-0177
Form Number: ATF F 5100.29 (4440)
Type of Review: Extension
Title: Catering Locations

OMB Number: 1512-0221
Form Number: ATF F 5640.1
Type of Review: Extension
Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code

OMB Number: 1512-0222
Form Number: ATF F 5400.6
Type of Review: Extension
Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration (FAA) Act

Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: New
Form Number: IRS Forms 1120-W (Fiscal) and 1120-W (Calendar)
Type of Review: New
Title: Fiscal Year Coporation Estimated Tax

OMB Number: 1545-0010
Form Number: IRS Form W-4
Type of Review: Revision
Title: Employee's Withholding Allowance Certificate

OMB Number: 1545-0138
Form Number: IRS Form 2063
Type of Review: Extension
Title: U.S. Deporting Alien Income Tax Statement

OMB Number: 1545-0938
Form Number: IRS Form 1120-IC-DISC, Schedule K and Schedule P
Type of Review: Extension
Title: Interest Charge Domestic International Sales Corporation Return—1986, and its Related Schedules K and P

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-22870 Filed 10-8-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 86-179]

Approval of Transcan Marine Consultants & Surveyors To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Transcan Marine Consultants & Surveyors, 2500 Central Parkway, Suite V2, Houston, Texas 77092, has applied to Customs for approval to guage imported petroleum and petroleum products. It has been determined that Transcan meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of Transcan Marine Consultants & Surveyors to guage imported petroleum and petroleum products in all Customs districts is approved.

EFFECTIVE DATE: September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: September 29, 1986.

Roger J. Crain,

Chief, Technical Section, Technical Services Division.

[FR Doc. 86-22910 Filed 10-8-86; 8:45 am]

BILLING CODE 4820-02-M

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: On January 22, 1986, a final rule was published in the **Federal Register** (51 FR 2875) amending the regulations governing practice before the Internal Revenue Service. The amendment requires that those who are enrolled to practice before the Internal Revenue Service (enrolled agents) renew their enrollment on a periodic basis. A condition of eligibility for renewal of enrollment is the satisfaction of continuing professional education requirements set forth in the amendments.

Pursuant to § 10.6(g)(5) of the amendment, this notice contains a listing of those who, through the filing of sponsors agreements, have been approved by the Director of Practice as having programs qualified for continuing professional education for enrolled agents. Also listed are professional organization and/or society sponsors who have sought and received approval by the Director of Practice as having programs recognized for continuing professional education under the regulations.

DATE: This list of sponsor agreements and qualified professional organization or society sponsors are those approved as of October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, Internal Revenue Service, Washington, DC 20224, (202) 535-6787.

SUPPLEMENTARY INFORMATION: The administration of the program relating to practice before the Internal Revenue Service is the responsibility of the Office of Director of Practice. Regulations governing such practice are contained in 31 CFR Part 10, reprinted as Treasury Department Circular No. 230 (Circular 230). An amendment to Circular 230 was published as final rule on January 22, 1986. The amendment requires that those enrolled to practice before the Internal Revenue Service renew their enrollment on a periodic basis. A condition of eligibility for renewal is the satisfaction of the continuing professional education requirements delineated in the regulations.

Section 10.6(g)(2) of Circular 230 provides the a qualified program sponsor:

(1) Be an accredited education institution; or

(2) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the inssuance of a license in the field of accounting of law; or

(3) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter withing the scope of the regulations; or

(4) File a sponsor agreement with the Director of Practice to obtain approval of the program as a qualified continuing education program.

As indicated, only those who wish to qualify under (3) or (4) above are required to submit a request to be a qualified sponsor. However, the program of all sponsors must satisfy the requirements of the regulations.

Section 10.6(g)(5) of Circular 230 requires that a listing of those whose sponsor agreemtns have been approved and those qualified professional organization or society sponsors approved by the Director of Practice be published on a periodic basis. The following listing constitutes such publication of those approved as of the date of this notice. It is anticipated that others will be added to the listing in subsequent publications. The listing is valid through January 31, 1990.

Listing of Approved Sponsors for CPE

Prepared by the Office of Director of Practice

Accountants Association of Iowa; Martha L. Wilkinson, 414-415 S.G.S. Bldg., 1222nd Street, SE., Cedar Rapids, IA 52401

Accountants Society of Virginia, Inc., Robert Grille, 803 W. Broad Street, Suite 111, Falls Church, VA 22046

Accounting Publications, Inc., Irvin N. Gleim, Post Office Box 12848, University Station, Gainesville, FL 32604

Acct. Service Bureau of Long Island, Dr. William Stevenson, 34 Merrick Avenue, Merrick, NY 11566

Active Professionals, Edna R. Olson, 3517 Marconi Avenue, Suite 101, Sacramento, CA 95821

Aikane Tax Service, Inc., Mr. C. William Scharff, 700 Richards Street, #2005, Honolulu, HI 96813

Alabama Association of Public Acct., H.A. Gumpf, P.O. Box 1908, Montgomery, AL 36103

Alaska Society of Independent Acct., Grace Buckbee, 9300 Spruce Knoll Circle, Anchorage, AK 99516

Alpha Tax Services, Inc., Glenn Grote, 7866 North Oracle Road, Tucson, AZ 85704

Amador County Tax Practitioner's Assoc., Robert C. Devlin, P.O. Box 44, Valcano, CA 95689

American Academy of Actuaries, Stephen G. Kellison, 1720 "I" Street, NW., 7th Floor, Washington, DC 20006

American Society of Professional Acct., Rose B. Wolf, 20750 Ventura Blvd. #200, Woodland Hills, CA 91364

Andrews Business Corp., William Maledy, 22108 Harper, St. Clair Shores, MI 48080

Arizona Soc. of Practicing Accountant, David J. Gordon, 211 E. Osborn, Phoenix, AZ 85012

Arkansas Society of Public Accountants, Laverne Long, P.O. Box 758, 908 Highway 67 N, Newport, AR 72112

Beaver Lake Prof. Tax and Consultation Ser., Henry C. Baurley III, 175 Weavervill Highway, Asheville, NC 28804

Becker CPA Review Course, Keri Strain, 15760 Ventura Blvd., Suite 1101, Encino, CA 91436

Black and Skaggs Associates, Frederick W. Devall, 1109 Comerica Building, P.O. Box 1130, Battle Creek, MI 49016

Bolle Managements Consultants, Lou Bolle, 9085 E. Mineral Circle, Suite 260, Englewood, CO 80112

Boston Tax Institute, Ltd., Lucien P. Gauthier, 201 Old Farm Road, Milton, MA 02186

Brass Tax Presentations, Robert Kosters, 12211 Front Street, P.O. Box T, Norwalk, CA 90650

Broward Chapter of the Florida Society of Enrolled Agents, Mike San Miguel, 120 South University Drive, Plantation, FL 33324
Bucks County Community College, Thomas E. Zaher, Founders Hall Room #224, Swamp Road, Newton, PA 18940
Burleigh, Dunger, Cochran, Sorsby and Farrimo, Terry W. Dunger, 5100 Poplar, Suite 2408, Memphis, TN 38137
California Society of Enrolled Agents, William G. Sprague, P.O. Box 60617, Sacramento, CA 95860
Central Arizona Chapter of Association of Enrolled Agents, Nancy E. Peternel, c/o 3613 N. Kachina Lane, Scottsdale, AZ 85251
Cherry, Bekaert and Holland, CPAS, George E. Tornwall, One Plaza Place, NE, Suite 1200, St. Petersburg, FL 33701
Clayton L. Scroggins Associations, Inc., Judith Murray, 200 Northland Blvd., Cincinnati, OH 45246
CND/TIME, Ray Harless, P.O. Box 27234, San Francisco, CA 94127
Cobb Chapter, Georgia Association of Public Accountants—Alan Burnham, 6065 Roswell Road, NE., Suite 612, Sandy Springs, GA 30328
Colorado Society of Enrolled Agents, Mildred A. Cassai, 1823 W. 39th Avenue, Denver, CO 80211
Commerce Clearing House, Joseph Gornick, 4025 W. Peterson Avenue, Chicago, IL 60646
Compensation Systems Co., John Carey, 2300 Financial Center, Seattle, WA 98161
Comptrol, Inc., Lionel Chan, 605 Market Street, San Francisco, CA 94105
Connecticut Society of Enrolled Agents, Herbert O. Burton, P.O. Box 506, Gales Ferry, CT 06335
Corbel and Co., Brenda E. Chatham, 6620 Southpoint Drive, S., Jacksonville, FL 32216
Crawford Income Tax Service, Eloise Crawford, P.O. Box 1035, Springfield, OR 97478
DC Institute of CPAS, Ann F. Gavan, 2100 Pennsylvania Ave., NW #240, Washington, DC 20037
Empire State Assoc. of Public Acct., Arthur D. Cole, 37-06 30th Avenue, Long Island City, NY 11103
Farm Credit Banks of Springfield, William E. Chewing, P.O. Box 141, Springfield, MA 01102
Fawcett, Marlene, Marlene Fawcett, 341 West 2nd Street, Suite 4, San Bernardino, CA 92401
Fl. Assoc. of Indpt. Acct./Suncoast Chpt., Betty Rochnowski, 1939-D So. Tamiami Trail, Venice, FL 33595
Florida Assoc. of Independent Acct., Robert Rinehart, Jr., P.O. Box 13089, Tallahassee, FL 32317
Florida Assoc. of Indpnt. Acct. Central Florida Chapter—James Valentine, c/o Valentine and Company, 8022 Office Court, Orlando, FL 32809
Florida Soc. of E.A.-Naples/Ft. Myers, Irene M. Lichtefeld, 2840 Shoreview Drive, Naples, FL 33962
Florida Society of Enrolled Agents, Palm Beach Chapter—Robert Wallis, 3959 Lake Worth Road, Lake Worth, FL 33461
Florida Society of Enrolled Agents/Capital City Chapter—William E. Jones, P.O. Box 3867, Tallahassee, FL 32315
Foundation for Continuing Education Inc., Richard Soland, P.O. Box 458, Welham, MA 01984
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General Business Services, Inc., Andrea S. Rains, 51 Monroe Street, Rockville, MD 20850
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Indiana Society of Public Accountants, James E. Tilford, 825 East 64th Street, Indianapolis, IN 46220
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Practical Tax Preparer's Clinic, Edward Dunn, 13575 Calais Drive, Del Mar, CA 92014
Prof. Services for Tax Preparers, Inc., Paul B. Shumaker, 2007 W. Hedding Street, Suite 209, San Jose, CA 95128
Professional Tax Institutes, Inc., Jack O. Williamson, P.O. Box 3854, Longwood, FL 32779
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Dated: October 6, 1986.

Leslie S. Shapiro,

Director of Practice.

[FR Doc. 86–22896 Filed 10–8–86; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel; Meeting

The first meeting of the English Teaching Advisory Panel will be held on November 13 and 14, 1986.

The first session of the two day meeting will commence at 9:00 a.m. on November 13, 1986. Topics to be discussed by the Panel members are as follows:

a. The background, scope, and mission of the Advisory Panel;

b. The role of the English Language Programs Division in USIA, i.e., the program office; the materials office; and, the English Teaching Forum;

c. English Language Teaching by Broadcast—the Macmillan project;

d. other Agency elements involved in English teaching;

e. Any other subjects introduced by Panel members before the dates of the meeting.

The public is invited to attend this meeting. Any member of the public wishing to file a written statement with the Panel may do so before or after the meeting.

The location of the meeting is 301 Fourth Street SW., Washington, DC, Room 840.

Members of the public desiring more specific information may contact the English Teaching staff of USIA at (202) 475–2877.

Dated: October 3, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–22958 Filed 10–8–86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
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State Justice Institute	4

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, 10:00 a.m., Thursday, October 9, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public

MATTERS TO BE CONSIDERED:

1. Industrial Safety Handbook

The Commission will consider the proposal forwarded by the American National Standards Institute/CPSC Coordinating Committee for the Commission to lead in the development of a publication to be used by manufacturers of consumer products. The publication would assist in the manufacture of safer products.

2. Building Consolidation

The staff will brief the Commission on consolidation and implications of work space planning.

3. Management Review: Field Operations Reorganization

The staff will brief the Commission on issues related to reorganization options for field operations.

The Commission by majority vote decided that agency business required scheduling this meeting without normal advance notice.

For a recorded message containing the latest agenda information, call:

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301-492-6800.

October 7, 1986.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 86-22990 Filed 10-7-86; 1:19 pm]

BILLING CODE 6355-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, October 15, 1986.

PLACE: 1776 G Street NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Central Liquidity Facility Reserving Policy for FY 1987.
5. Central Liquidity Facility Agent Commitment Fees.
6. Insurance Fund Report.
7. National Credit Union Share Insurance Fund Dividend and Insurance Premium.
8. Corporate Federal Credit Union Report.
9. Report on Progress of Supervisory Committee Guide.
10. Final Rule: Parts 740, 741 and 745, Share Insurance Rules: Advertising, Termination, Account Coverage.
11. National Credit Union Share Insurance Fund Overhead Transfer Rate.
12. Charter Amendment: Expansion of Field of Membership for Sidney FCU, #6011, Sidney, N.Y.

RECESS: 11:00 a.m.

TIME AND DATE: 11:15 a.m., Wednesday, October 15, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Central Liquidity Facility Lines of Credit. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Appeal of Field of Membership Overlap approved by Regional Director. Closed pursuant to exemption (8).
4. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
6. PC Pilot Program. Closed pursuant to exemption (2).
7. Board Briefings. Closed pursuant to exemptions (2), (8) and (9)(A)(ii).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 86-22972 Filed 10-7-86; 11:32 am]

BILLING CODE 7535-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an open meeting as soon as possible following the signing of the Tax Reform Act of 1986:

To consider whether to authorize the issuance of an interpretive release concerning the disclosure of the effects of the Tax Reform Act of 1986. The Commission may discuss the disclosure by registrants of the effects of the Tax Reform Act, and whether it should object to the presentation of disclosures which quantify the effects of the Tax Reform Act by the pro forma application of the provision of the Financial Accounting Standards Board's Exposure Draft, "Proposed Statement of Financial Accounting Standards—Accounting for Income Taxes." For further information, please contact John A. Heyman at (202) 272-2130.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

Jonathan Katz,
Secretary.

October 3, 1986.

[FR Doc. 86-22984 Filed 10-7-86; 12:48 pm]

BILLING CODE 8010-01-M

4

STATE JUSTICE INSTITUTE

(Board of Directors)

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409 (5 USC 552b)

DATE AND TIME: Thursday, October 9, 1986—11:00 a.m. to 5:00 p.m.

PLACE: District of Columbia Courthouse, 500 Indiana Avenue NW, Room 2500 Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: The Board will consider matters conserning the organization, budget, staffing, and program of the State Justice Institute.

CONTACT PERSON FOR MORE INFORMATION: Richard Van Duizend, (703) 841–0200.

Dated: October 6, 1986.

Larry P. Polansky,

Member, State Justice Institute Board of Directors.

FR Doc. 86–23017 Filed 10–7–86; 3:23 pm]

BILLING CODE 0000–00–M

federal register

Thursday
October 9, 1986

Part II

Environmental Protection Agency

40 CFR Parts 262, 265, and 271

Hazardous Waste Management System; Hazardous Waste Accumulation Tank System Standards for Generators of 100 to 1,000 Kilograms Per Month; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 265, and 271

[SWH-FRL-3028-9]

Hazardous Waste Management System; Hazardous Waste Accumulation Tank System Standards for Generators of 100 to 1,000 Kilograms Per Month

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to subject generators of 100 to 1,000 kilograms of hazardous waste per month who accumulate hazardous waste in tank systems prior to off-site shipment to new standards. These are the same tank system rules promulgated on July 14, 1986 (51 FR 25422) for larger generators under the Resource Conservation and Recovery Act (RCRA). The proposed regulatory amendments would require that 100–1,000 kilograms per month generators perform periodic leak assessments of their hazardous waste accumulation tank systems and provide secondary containment for all new and leaking tank systems. They also would require all existing tank systems to be provided with secondary containment by the time they reach 15 years of age. EPA is also soliciting comments and information on a number of alternative regulatory options that are being considered for these generators.

DATES: Comments must be received on or before January 7, 1987.

The proposed Parts 262, 265, and 271 standards applicable to 100–1,000 kg/mo generators would take effect six months after the date of publication in the **Federal Register** of the final rules.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket # F-86-RTSQ-FFFFF on your comments. For additional details about the OSW docket see the "Supporting Documents" section in "Supplementary Information."

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424-9346, (in Washington, DC, call 382-3000), the Small Business Hotline, (800) 368-5888, or William J. Kline, (202) 382-7917, Office of Solid Waste (WH-565A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed below:

I. Authority
II. Background
A. May 19, 1980 Regulations
B. Hazardous and Solid Waste Amendments of 1984
C. June 26, 1985 Proposed Rules for Tank Systems
D. August 1, 1985 Proposed Rules for Generators of 100–1,000 kg/mo
E. March 24, 1986 Final Rules for Generators of 100–1,000 kg/mo
F. July 14, 1986 Final Rules for Hazardous Waste Storage and Treatment Tank Systems
G. Summary of This Proposed Rule and Request for Comments
III. Proposed Strategy to Regulate Accumulation Tank Systems of 100–1,000 kg/mo Generators
A. Summary of Approach Adopted in the July 14, 1986 Final Tank System Rules
B. Approach to Regulating Accumulation Tank Systems of 100–1,000 kg/mo Generators
C. Basis for Proposal and Alternative Regulatory Approaches; Request for Comments
1. Request for Comment on Alternative Approaches
2. Risk Analysis
3. Economic Analysis
4. Effective Dates
5. Request for Comments
D. Regulation of Underground Product Storage Tanks under Subtitle I (the UST Program)
E. Relationship of Proposed Regulation to Section 3014 of RCRA (Used Oil)
F. Explanation of Proposed Regulatory Language
IV. Impact on Authorized States
A. Applicability in Authorized States
B. Effect on State Authorizations
V. Regulatory Impact Analysis
VI. Paperwork Reduction Act
VII. Regulatory Flexibility Analysis
VIII. Supporting Documents
IX. List of Subjects
Appendix A—Economic Analysis—Summary

I. Authority

These regulations are being proposed under authority of sections 2002, 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6921, 6922, 6924, and 6926).

II. Background

In the following discussion on the statutory and regulatory requirements applicable to 100–1,000 kg/mo generators, it may be useful to distinguish among three classes of regulated persons. The first class consists of 100–1,000 kg/mo generators who accumulate up to 6,000 kg of hazardous wastes on-site for 180 days or less (or 270 days if the waste must be shipped more than 200 miles). These generators are the subject of today's proposal, and are the only class for which the Agency is today requesting comment on possible tank system requirements. The second class consists of 100–1,000 kg/mo generators who store hazardous waste on-site for more than 180 (or 270) days. These generators, as of March 1987, are subject to full Parts 264 and 265 requirements, including the new Subpart J tank system requirements promulgated on July 14, 1986. The third class consists of off-site treatment, storage or disposal (TSD) facilities who accept hazardous waste from 100–1,000 kg/mo generators. These facilities must comply with full Parts 264 and 265 requirements, as of September 22, 1986, and with the new Subpart J requirements, as of January 12, 1987.

A. May 19, 1980 Regulations

On May 19, 1980, EPA promulgated hazardous waste management regulations applicable to generators and transporters of hazardous waste and to interim status facilities that treat, store, or dispose of hazardous waste (see 45 FR 33066). As part of these regulations, EPA adopted special requirements in 40 CFR 262.34 which, if met by generators of hazardous waste, would allow them to accumulate hazardous waste on-site for 90 days in tanks or containers without having to obtain a RCRA permit as a storage or treatment facility. If the waste is placed in tanks, the generator must comply with Subpart J of 40 CFR Part 265. 40 CFR 262.34(a)(1).

Under 40 CFR 261.5 of the 1980 regulations, generators of less than 1,000 kilograms per month of non-acutely hazardous waste were conditionally exempt from most of the requirements of Subtitle C of RCRA. Therefore, the requirements of 40 CFR Subpart J, for storage and treatment of hazardous waste in tanks did not apply to these small quantity generators who met the conditions for exemption.

B. Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA) of 1984 added a new section 3001(d) to RCRA, which modified this regulatory exemption for small quantity generators. New section 3001(d) directs EPA to promulgate, no later than March 31, 1986, standards applicable to generators of between 100 and 1,000 kilograms per month of hazardous waste ("100–1,000 kg/mo generators").

Section 3001(d) standards must require that all treatment, storage, or disposal of hazardous waste generated

by 100–1,000 kg/mo generators occur at facilities with interim status or a permit. However, the standards must allow generators of 100–1,000 kg/mo to store hazardous waste for 180 days without the need for interim status or a RCRA permit (or for 270 days if the waste is shipped or hauled over 200 miles for off-site storage, treatment, or disposal). No more than a total of 6,000 kilograms of hazardous waste may be stored on site at any one time.

Section 3001(d) requires that EPA promulgate standards, sufficient to protect human health and the environment, for the management of hazardous waste from generators of 100–1,000 kg/mo. Such standards would include those applicable to accumulation of hazardous waste in tank systems for 180 (or 270) days. During the last twelve months, EPA has addressed the subject of requirements for accumulation of hazardous waste from 100–1,000 kg/mo generators in four notices of rulemaking, discussed chronologically below.

C. June 26, 1985 Proposed Rules for Tank Systems

On June 26, 1985, EPA proposed regulations applicable to the storage and treatment of hazardous waste in tank systems (see 50 FR 26444). These proposed amendments to the existing standards were designed to meet the mandates of HSWA sections 3004(o)(4) and 3004(w), and to modify certain existing tank standards that have proved unworkable or ineffective. Specifically, EPA proposed in part that all tank systems subject to the 90-day accumulator provisions of 40 CFR 262.34 have full secondary containment.

At the time of the proposal, generators of less than 1,000 kg/mo of hazardous waste were conditionally exempt from RCRA regulations, in accordance with 40 CFR 261.5. Thus, such conditionally exempt small quantity generators were not specifically addressed with regard to the proposed requirements for secondary containment for hazardous waste treatment and storage tank systems or the proposed requirements for tank system integrity assessments or associated administrative requirements. Instead, the June 26 proposal stated that the Agency would decide on appropriate 40 CFR Subpart J tank system requirements to apply to small quantity generators in the proposed rulemaking for 100–1,000 kg/mo generators under section 3001(d). In addition, the Agency solicited comments on options for regulating the storage of hazardous waste in tank systems by small quantity generators and the impact of the proposed tank system regulations upon such generators (see 50 FR 26488).

D. August 1, 1985 Proposed Rules for Generators of 100–1,000 Kg/Mo

On August 1, 1985, EPA proposed regulations applicable to the generation, transportation, and treatment, storage, and disposal of non-acutely hazardous waste from 100–1,000 kg/mo generators (see 50 FR 31278). Among the proposed requirements, which the Agency believed necessary to protect human health and the environment, were rules applicable to generators who accumulate hazardous waste in tanks for 180 days (or 270 days where the waste was to be shipped or hauled a distance greater than 200 miles) for amounts less than 6,000 kilograms. In essence, the proposed regulations for on-site accumulation by 100–1,000 kg/mo generators were the same as then existing requirements under § 262.34 for generators of greater than 1,000 kg/mo who accumulate hazardous wastes in tanks for 90 days. However, in recognition of the small business nature of 100–1,000 kg/mo generators, the Agency did propose to simplify some administrative aspects of the requirements, such as requiring less formal and paper-work intensive contingency plans and employee training.

With regard to the specific requirements for accumulation of hazardous waste in tanks, the Agency proposed that the then existing 40 CFR Subpart J requirements would apply to 100–1,000 kg/mo generators. In so doing, the Agency did not propose that 100–1,000 kg/mo generators who accumulate in tanks become subject to the revised tank system standards proposed on June 26, 1985. The August 1, 1985 proposal incorporated by reference the June 26, 1985 proposed amendments to the Subpart J tank system requirements for generators of 100–1,000 kg/mo who store hazardous waste in tank systems for longer than 180 (or 270) days. These tank systems were proposed to be subject to full regulation under Parts 264 and 265 of the hazardous waste regulations as a hazardous waste facility, since the Agency saw no basis for distinguishing these tank systems from other hazardous waste facilities.

However, the preamble explained that the Agency had not yet determined whether the proposed amendments to Subpart J of Part 265 requiring secondary containment for short-term accumulation tank systems should also be applied to generators of 100–1,000 kg/mo since the Agency had not yet completed an assessment of the potential risks which such accumulation tank systems may pose.

E. March 24, 1986 Final Rules for Generators of 100–1,000 Kg/Mo

On March 24, 1986, the Agency issued final regulations applicable to the generation, transportation and treatment, storage, and disposal of non-acutely hazardous waste from 100–1,000 kg/mo generators (see 51 FR 10146). As was proposed, the Agency applied, under § 262.34, the existing (as of March 24, 1986) 40 CFR Part 265, Subpart J requirements to 100–1,000 kg/mo generators who accumulated hazardous waste in tanks. Thus, generators of 100–1,000 kg/mo of hazardous waste who accumulate hazardous waste in tanks for 180 (or 270) days would not automatically become subject to the amendments to Subpart J. Of course, generators of 100–1,000 kg/mo of hazardous waste who store their waste in tanks for periods of time *greater* than 180 (or 270) days or who are otherwise required to obtain interim status or a permit would become subject to the new Subpart J requirements, consistent with the Agency's August 1, 1985 proposal.

F. July 14, 1986 Final Rules for Hazardous Waste Storage and Treatment Tank Systems

On July 14, 1986, the Agency issued final amendments to the regulations applicable to the accumulation, storage or treatment of hazardous waste in tank systems (see 51 FR 25422). These amended regulations, which will become effective on January 12, 1987, will apply to all hazardous waste generators and owners or operators of hazardous waste treatment, storage and disposal facilities except for handlers of hazardous waste which is conditionally exempt from regulation pursuant to § 261.5, and except for 100–1,000 kg/mo generators who accumulate hazardous waste in tanks in accordance with § 262.34(d).

These final amendments are discussed in detail in section III.A. of this preamble. In brief, the final regulations require that secondary containment with leak detection be provided for all new and existing tank systems that are used for the accumulation, storage, or treatment of hazardous waste. The rules include technical standards for the design, installation, and operation of hazardous waste tank systems. The rules also impose administrative requirements for tank system integrity assessments, leak testing, recordkeeping, and reporting. An opportunity for a variance from the secondary containment requirements of

the final rules is provided based upon a showing of equivalent protection of human health and the environment as that provided by secondary containment through the use of an alternative tank system design and operating conditions and/or hydrogeologic setting. A variance may also be granted by the Regional Administrator following a showing that a tank system would pose no substantial present or potential hazard to human health or the environment, even in the event of a release of its contents to ground water or surface water.

The rules provide for a phase-in of the secondary containment and leak detection requirements for existing tank systems. Non-leaking existing tank systems must be replaced or retrofitted with secondary containment and leak detection by the time the tank system reaches 15 years of age.

As explained in the remainder of this preamble, tank systems utilized by 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems prior to off-site shipment *do not* as a result of the July 14, 1986 final rules become subject to the secondary containment and leak detection requirements. Instead, today, the Agency is *proposing* to subject these generators to the final tank system rules and is inviting comments and supporting information on alternative regulatory strategies.

The Agency strongly encourages all readers to become familiar with the July 14, 1986 final rule and accompanying preamble (51 FR 25422), to assist the reader in understanding today's proposed rulemaking.

G. Summary of This Proposed Rule and Request for Comments

At the time of the March 24, 1986 rulemaking, the Agency had not judged whether protection of human health and the environment required imposing requirements beyond those contained in the then existing Subpart J for 100–1,000 kg/mo generators accumulating hazardous waste in tanks for 180 (or 270) days. Since that time, the Agency has completed its risk analysis, which includes an assessment of the risks posed by small accumulation tanks. The Agency has also evaluated the economic impact that these proposed tank system regulations would impose on 100–1,000 kg/mo generators. Based on this information, the Agency is today proposing that 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems for 180 (or 270) days be made subject to those portions of the new Subpart J requirements, promulgated in the July 14, 1986 **Federal Register** (51 FR 25422), that apply to generators of greater than 1,000 kg/mo who accumulate hazardous waste in tank systems. The Agency's risk analysis demonstrates that even small release volumes of the waste streams associated with 100–1,000 kg/mo generators may pose a risk to human health and the environment. In addition, the risk analysis indicates that secondary containment is the most effective and reliable method for reducing the risk posed by such tank systems.

The Agency has determined, based on data and information currently available, that secondary containment is the preferred option for protecting against the risks posed by 100–1,000 kg/mo generator accumulation tank systems. Other strategies for protecting against leaking tank systems have been suggested and considered by EPA, but available data show them to be less protective than the approach taken by the Agency in the final tank system regulations.

While the Agency has determined from its economic assessment that the secondary containment requirements would not have severe economic impacts on 100–1,000 kg/mo generators, it will consider varying the requirements if they are shown to be unduly burdensome. The economic burden of the requirements on 100–1,000 kg/mo generators is of special concern to EPA because, for those generators, EPA must give weight to economic impacts where alternatives exist which provide comparable protection of human health and the environment. Similar considerations also apply in the cases of regulation of underground product storage tanks and used oil tanks. As explained in later sections of this preamble, EPA does not believe that regulations for each of these three types of tank systems must necessarily be the same as the regulations for other hazardous waste tank systems. The Agency will consider alternative regulatory approaches if they adequately protect against the risks posed by these tanks. A number of potential options are discussed below.

Although EPA has previously received comments suggesting that these generators' tank systems present lower risks than other hazardous waste tank systems and comments suggesting alternatives to secondary containment, these comments have not been sufficiently supported by data or information. Section III.C.2. below contains a more detailed discussion of comments received. If more complete verifiable data and information are submitted to show that the entire population or subsets of these tank systems do present lower risks than other hazardous waste tank systems or that alternatives to secondary containment would be adequately protective, the Agency will consider adopting alternative technical requirements as well as reducing any associated administrative requirements.

EPA does not believe that accumulation tank system regulations for 100–1,000 kg/mo generators must necessarily be the same as those adopted for other generators, especially in view of the economic impacts that might result. However, in the absence of data showing that risks from these tank systems can be adequately addressed by alternative measures, the Agency has chosen to propose the same approach adopted for other hazardous waste tank systems. Therefore, it is important that commenters provide additional information to supplement the limited data that the Agency has available to it.

The Agency seeks information on all aspects of accumulation of hazardous wastes in tank systems by 100–1,000 kg/mo generators. Specifically, the Agency is interested in receiving information on: Hazardous waste characterization (i.e., types of hazardous waste and constituents and constituent concentrations); the prevalence of accumulation of hazardous waste in tank systems by production process and industrial sector; current accumulation tank system design and operating practices, differentiated by new versus existing tank systems (e.g., above ground versus underground, indoor versus out of doors, and proximity to drinking water supplies and sources); and historic information on tank system leakage and resultant human health and environmental impacts.

The Agency invites comments and information that both support and refute currently available information that is discussed throughout this preamble.

While no one commenter or even a group of commenters is likely to have access to all of the information the Agency is seeking, all interested parties are encouraged to provide whatever information they have available. After reviewing all the information submitted in response to this proposed rulemaking, the Agency will be in a much better position to pursue any remaining data gaps.

III. Proposed Strategy To Regulate Accumulation Tank Systems of 100–1,000 kg/mo Generators

A. Summary of Approach Adopted in the July 14, 1986 Final Tank System Rules

As explained in detail in the preamble to the July 14, 1986 final tank system rules (51 FR 25422), the Agency's overall strategy for accomplishing the statutory goal of protecting human health and the environment from the risks posed by hazardous waste storage and treatment facilities is to prevent the migration of hazardous waste constituents to ground and surface waters where such releases may present a risk to human health and the environment. A key element of the overall strategy is the need to detect releases in a timely manner so that an appropriate response can be made.

The Agency's overall risk management strategy has evolved from the following considerations. First, there is a need to address further regulation of hazardous waste tank systems because the current situation most likely presents significant risks. A number of studies have shown that tank systems are likely to be leaking or are likely to leak in the future. Releases from tank systems are likely to contaminate ground water, posing risks to human health and the environment.

Second, based on EPA's review of the technical options, as well as the rationale expressed in the preamble to the January 12, 1981 hazardous waste tank regulations, the Agency has concluded that a regulatory approach that emphasizes secondary containment with leak detection both satisfies the statutory objective and is consistent with the function of tank systems as storage, rather than disposal, units.

The regulatory strategy promulgated on July 14, 1986 is applicable to tank systems, not only to the tanks themselves, as had been the case previously. The Agency has received new information showing that there is a high potential for release not just from tanks themselves, but also from ancillary equipment such as piping, fittings and valves.

While the focus of these regulations is on secondary containment, the Agency recognizes that secondary containment is not always necessary to achieve the statutory objectives.

Accordingly, the Agency has included in the regulations the opportunity to obtain variances from the secondary containment requirements. The variance opportunity is discussed in detail in the preamble to the July 14, 1986 final rules (51 FR 25451–25453).

The variance opportunity is available to 90-day accumulators and interim status as well as permitted hazardous waste management facilities. A variance may be granted by the Regional Administrator following submission of information that demonstrates that (1) alternative design and operating practices, together with location characteristics, will be as effective as secondary containment in preventing migration of hazardous waste or constituents into ground water or surface water, or (2) no substantial present or potential hazard would be posed to human health or the environment even in the event of a release from the tank system. Only the first variance basis (i.e., equivalent design, operation, and location) is available to new underground tank systems utilized by interim status facilities or 90-day accumulators because section 3004(o)(4) of RCRA requires that all new underground tanks have leak detection systems that detect leaks at the "earliest practicable time."

The principal reliance on secondary containment does not mean that all existing tank systems must be equipped with secondary containment immediately. The regulations provide for an orderly phase-in of secondary containment for existing tank systems.

The major features of the Agency's risk management strategy for hazardous waste tank systems, as expressed in the final hazardous waste tank system rules, are summarized below.

The first is the maintenance of the integrity of the primary containment structure. For both new and existing tank systems, the final rule requires that the primary tank system be designed properly and that it is compatible with the wastes that are stored or treated. For existing tank systems not fitted with a secondary containment system, a tank integrity test must be conducted by the owner/operator within 12 months of the effective date of the final rules (i.e., January 12, 1988) to identify leaks from the primary tank system. To ensure the integrity of metal tank systems, all new metal tank systems in which all or part of the system is or will be in contact with the soil or with water are required to be evaluated for corrosion potential by a corrosion expert. As a protective measure for cathodic corrosion protection devices, the rule requires regular inspection/testing of sacrificial anode potential and impressed current sources.

The second feature of the Agency's overall regulatory approach of effective containment of wastes is proper installation of new tank systems. The final rules require an independent, qualified installation inspector or professional engineer to certify that the tank system is structurally sound before installation and that proper handling procedures are adhered to during installation. Tank systems must be tested for tightness prior to use. Tanks and piping must be supported properly, and corrosion protection must be installed if needed. The design and installation requirements are intended to prevent tank system failure and leaks due to improper design and installation practices, which are known to be major causes of tank system failures. These requirements can also lead to long-term prevention of leaks due to structural failure and/or corrosion.

The third feature of the Agency's containment approach is secondary containment with leak detection to collect and detect leaks from the primary containment vessel. Despite the provisions for new tank systems requiring proper design, installation, and operation of the primary containment system, available data show that leaks are still likely to occur. The function of the secondary containment and leak detection system is to ensure that leaks are detected before they migrate beyond the zone of engineering control (i.e., an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous constituents to ground water or surface waters). The secondary containment system collects and contains releases from the primary containment vessel so that releases can be detected before they migrate to the environment. The leak detection system allows prompt detection of any release from the primary system to the secondary containment system. The rule provides design standards for vaults, exterior liners, and double-walled tank secondary containment systems.

The final rules require secondary containment for new tank systems and existing tank systems that are found to be leaking before they are placed or returned into service. In addition, owners and operators of existing tank systems are required to install secondary containment within two years of the date of promulgation of the final rule if storing or treating certain listed dioxin-containing wastes or, in the case of other hazardous wastes, within two years or by the time the tank system reaches 15 years of age, whichever comes later. In the event that the age of the tank system is unknown, EPA will assume, based on its study of the age distribution of hazardous waste tanks, that the tank system is seven years old,

the median age of all hazardous waste tanks, unless the facility at which the tank system is located is known to be older than seven years of age. In the latter instance, secondary containment would be required within two years, or by the time the facility reaches 15 years of age, whichever comes later. Tanks systems without full secondary containment are subject to periodic integrity assessments. Variances from the secondary containment requirements may be granted to permitted, interim status, and accumulation tank systems if the owner or operator demonstrates that hazardous wastes or constituents will not migrate into the ground water or surface water or that, in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

The final feature of EPA's regulatory approach incorporates provisions for adequate responses to releases of hazardous waste to the environment. The final rules require that all significant releases be reported, either to the Regional Administrator under RCRA or to the National Response Center under CERCLA regulations. In addition, immediate action must be taken to identify and stop the release, including, if necessary, emptying that part of the tank system found to be leaking until the leak has been stopped. The final rule requires that a qualified, registered professional engineer certify that major repairs have been properly made before a leaking tank system is returned to service. The final rule also requires that secondary containment with leak detection be provided for any component (i.e., tank or ancillary equipment) of the repaired tank system that is underground. In addition, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, the entire component must be provided with secondary containment with leak detection prior to being returned to service. EPA is also requiring owners or operators of tank systems to provide adequate closure, and, if necessary, post-closure care. All wastes and all contaminated components, soils, structure, and equipment must be removed from the site at closure, or the site must be provided with post-closure care similar to that required for landfills.

EPA concluded in the final rule that since there is no significant difference with respect to the risks posed by 90-day accumulation tank systems and the general hazardous waste tank system population, these tank systems should be managed in the same way, to the extent possible, as any hazardous waste tank system.

EPA also concluded that 90-day accumulation tank systems should be able to qualify for variances from secondary containment. Thus, the final rule requires that owners/operators of 90-day accumulation tank systems comply with many requirements of the final Part 265, Subpart J, including:

- A one-time assessment of the tank system, as discussed above, including the results of an integrity test;
- Installation standards;
- Design standards including an assessment of corrosion potential;
- Secondary containment phase-in provisions;
- Periodic leak testing if the tank system does not have secondary containment; and
- Additional response requirements to a leak, including a report to the Regional Administrator of the extent of the release and requirements for repair or replacement of leaking tanks.

Variance provisions that had been provided in the proposal only for permitted and interim status tank systems are available to 90-day accumulation tank systems.

The final rule does not require that owners/operators of 90-day accumulation tank systems comply with the final Part 265, Subpart J requirements for preparation of closure and post-closure plans, contingent closure and post-closure plans, financial responsibility requirements, and waste analysis and trial tests. Unlike off-site commercial hazardous waste storage and treatment facilities where a wide variety of hazardous wastes are managed, generators generally produce and would thus store or treat wastes that are relatively consistent in terms of their physical/chemical properties. Thus, EPA does not believe that waste analysis and trial tests must be conducted by generators of hazardous waste because of their familiarity with the wastes that they generate. In addition, EPA is conducting a review of the requirements that are imposed on owners/operators of accumulation tank systems and will address the issues of closure and post-closure, contingent closure and post-closure, and financial assurance requirements for accumulation tank systems as part of this review. An Advance Notice of Proposed Rulemaking that was published on July 14, 1986 (51 FR 25487) requested public comments with respect to imposing these requirements at accumulation tank systems and otherwise discussed modifying the existing exemption for accumulation tank systems from permitting.

B. Approach to Regulating Accumulation Tank Systems of 100–1,000 Kg/Mo Generators

As discussed in the proposed and final rules for 100–1,000 kg/mo generators (50 FR 31278, 51 FR 10146), EPA is authorized under section 3001(d)(2) of RCRA to vary standards for these generators. While Congress intended EPA to take into account impacts on 100–1,000 kg/mo generators in developing standards, it also directed that these standards be adequate to protect against the risks associated with hazardous waste management activities.

EPA's approach in the March 24, 1986 rule regulating accumulation of hazardous wastes by these generators was to relieve them from administrative impacts rather than technical requirements. This approach was based on a careful balancing of the two goals of avoiding unreasonable burdens on these generators and protecting human health and the environment. Clearly, the technical requirements under Subtitle C are more essential than administrative requirements to the goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. The Agency concluded that protection of human health and the environment overrode the potential economic impacts that the Subtitle C technical standards may cause.

In considering whether the Subpart J tank system amendments should be varied for 100–1,000 kg/mo generators, the Agency has conducted a similar analysis by balancing the risks associated with accumulation of hazardous wastes by these generators against the impacts from requiring compliance with the July 14, 1986 final hazardous waste tank system standards, including secondary containment. The Agency has considered whether the impacts, in light of the risks posed, would justify reducing or eliminating any technical or administrative aspects of the tank system standards.

The Agency has concluded, based on its economic analysis (see Appendix A), that imposing the full set of tank system standards would not have a significant economic impact on most 100–1,000 kg/mo generators. It has also decided, based upon current information and in particular its risk analysis, that given the risks posed by these tank systems, application of the full tank system requirements to these generators is the preferred regulatory approach. While it

is arguable that smaller generators' tank systems pose lesser relative risks for a given waste due to the smaller release volumes that would be associated with these generators' tank systems (assuming that smaller generators have smaller tanks), EPA's risk analysis indicates that even small releases could pose substantial risks over time. Thus, the same concerns that led the Agency to adopt secondary containment requirements for larger generators, such as the record of inevitable leaks from primary tank systems over time, appear to be equally applicable to 100–1,000 kg/mo generators.

However, in deciding whether the impacts of requiring the full tank system standards could be reduced for these generators without compromising protection of health and environment, the Agency considered whether any technical requirements or reporting, recordkeeping, and other administrative requirements that are associated with the technical standards could be reduced or eliminated. The Agency's economic analysis showed that varying one particular standard—the annual integrity assessment requirement—would have a relatively significant effect on the costs imposed by the regulation. Decreasing the frequency of the assessments would significantly reduce the costs of compliance. However, the Agency believes at this time that doing so could severely compromise the tank system standards because the assessments are the principal means for detecting releases up to such time as secondary containment is provided. Requiring integrity assessments every three or five years, for example, for underground tank systems without secondary containment would allow releases to remain undetected for longer periods of time. Similarly, leak inspections provide an essential element to the regulatory strategy for detecting releases from accumulation tank systems.

While the Agency believes at this time that, in order to protect human health and the environment, imposing not only secondary containment, but also the associated assessment and inspection requirements, on 100–1,000 kg/mo generators is preferable, it will consider reducing the frequency of such assessments and inspections. As discussed in greater detail in section III.C.1.i. below, if information is submitted to show that integrity assessments and leak inspections may be conducted less frequently for these tank systems while providing comparable protection to human health and the environment, the Agency will consider varying the regulatory requirement. The Agency also requests comments and information on other technical requirements that should be reconsidered for 100–1,000 kg/mo generators.

With regard to administrative requirements, the Agency's analysis showed that the costs associated with such requirements as certification of tank structural integrity, proper installation and recording of inspections for phased-in secondary containment are negligible. Similarly, reports to EPA or the National Response Center when releases are detected would not add significantly to the costs of compliance. These requirements are also an important part of the technical standards themselves, and reducing or eliminating them could significantly affect the overall effectiveness of those standards. Thus, the Agency is not proposing to exempt these generators from any administrative requirements at this time.

On the other hand, there may be ways to reduce the administrative burdens on these generators without reducing the effectiveness of the technical standards, and the Agency requests comments and information on this issue. For example, the Agency will consider modifying the requirement that records of inspection be made daily if information is submitted to show that this would be unduly burdensome to generators of 100–1,000 kg/mo.

Thus, the Agency is requesting comment on whether there are alternative regulatory approaches or administrative requirements that would reduce undue economic or administrative burdens on these generators without reducing the protectiveness of the tank system standards. A number of specific options are presented below to focus consideration of the issues by commenters.

C. Basis for Proposal and Alternative Regulatory Approaches; Request for Comments

EPA has considered alternative regulatory strategies for 100–1,000 kg/mo generators who accumulate hazardous wastes under § 262.34. First, EPA presented several alternative approaches in the August 1, 1985 proposal designed to reduce the regulatory burden on these generators and requested comment on the alternatives. Second, EPA's risk analysis for Hazardous Waste Tanks assessed five possible regulatory strategies for all hazardous waste tank systems, and comments were requested on the analysis. (51 FR 9072, March 17, 1986). Third, EPA's economic analysis assessed the impact of various regulatory approaches on 100–1,000 kg/mo generators. EPA has concluded that, based on the current analyses and comments received to date, the preferred option for 100–1,000 kg/mo generators that would be sufficiently protective of human health and the environment is requiring secondary containment and other standards that have been adopted for other generators. However, the Agency is requesting interested persons to submit comments and information on the analyses and on the specific regulatory alternatives discussed below, in light of today's proposal. If new information is submitted that affects the Agency's conclusions, EPA will reevaluate its regulatory approach in light of the new information. EPA will also reconsider any comments previously submitted on the risk analysis and regulatory options, as appropriate.

1. Request for Comment on Alternative Approaches

While EPA is today proposing to apply to 100–1,000 kg/mo generators essentially the same requirements that, as a result of the final hazardous waste tank system standards promulgated on July 14, 1986, will apply to generators of greater than 1,000 kg/mo of hazardous waste who accumulate in tank systems, the Agency is specifically requesting comment on a number of alternative regulatory approaches. The Agency has tentatively rejected each of these approaches to regulating hazardous waste accumulation tanks systems utilized by 100–1,000 kg/mo generators but is seeking additional information and data that would assist it in determining the appropriate final standards for hazardous waste tank systems utilized by these 100–1,000 kg/mo generators.

The Agency encourages commenters, when addressing the alternative regulatory strategies listed below, to explain their comments and information as they apply to new versus existing tank systems. Commenters should also explain whether their comments relate: To the entire 100–1,000 kg/mo accumulation tank system population; to only specified segments of the population; or to specific types of accumulation tank systems. Where a specific tank system design or operating practice is the basis for comments, information on the current prevalence of that design or practice should also be submitted.

The alternative regulatory strategies listed below are not presented in an

order that should be construed as indicative of the Agency's preferences.

a. *Retain Existing Subpart J Requirements.* The Agency will consider retaining the existing Subpart J requirements (i.e., § 265.201) for one or more subsets of 100–1,000 kg/mo generator accumulation tank systems that are shown to pose a low risk to human health and the environment. For example, certain tank systems may pose low risks because any releases from them may be easily detected and corrected and may be of small volume. Of course, in accordance with section 3004(o)(4) of RCRA, new underground tank systems will need to utilize a leak detection system that is capable of detecting leaks of hazardous constituents at the earliest practicable time. The Agency requests comment and information on whether 100–1,000 kg/mo generator accumulation tank systems merit the existing less stringent regulation due to the relatively low risks involved.

b. *Class Variances.* In the August 1, 1985 proposal, EPA requested comment on providing for a conditional exemption from secondary containment for 100–1,000 kg/mo generators who store relatively small amounts of waste for short periods. While several commenters supported this option, they did not submit information to specify the criteria to be applied. For example, some tank systems utilized by 100–1,000 kg/mo generators may be used to accumulate relatively less hazardous wastes or wastes in small volumes or low concentrations. These conditions of accumulation may not warrant full secondary containment. Similarly, indoor tank systems may pose low risks because of ease of inspection and detection of releases and the small volume of any possible releases to the environment. While today's proposal does adopt the site-specific variance opportunity and procedure (see § 265.193 (g) and (h)), EPA requests comment on the possibility of class variances from secondary containment for specific groups of tank systems of 100–1,000 kg/mo generators that, because of specific hazardous wastes, volumes, or constituent concentrations, present a low risk of harm to human health and the environment. More specifically, the Agency is seeking information on particular combinations of hazardous waste types and constituents, environmental settings, and system designs and operating practices that pose a sufficiently low risk to human health and the environment such that existing tank system requirements (i.e., § 265.201) applicable to 100–1,000 kg/mo generators who accumulate in tanks are protective of human health and the environment.

c. *Inventory Monitoring.* EPA requests comment regarding the possibility that inventory monitoring may be an acceptable alternative to secondary containment for specific groups of tank systems of 100–1,000 kg/mo generators. If releases from such tank systems could be readily detected by monitoring, it may serve as a viable regulatory alternative to secondary containment. Such an alternative would rely on accurate monitoring and recordkeeping to demonstrate that no significant release had occurred. EPA requests comment on what such inventory monitoring requirements should be. For example, the Agency seeks information that demonstrates that the use of simple volumetric measuring devices, such as dip sticks or gravity flow meters, can achieve a high degree of accuracy and reliability in detecting releases from some or all tank systems utilized by 100–1,000 kg/mo generators, which would enable prompt corrective measures and thereby reduce or prevent significant impacts on human health or the environment.

d. *Unsaturated Zone Monitoring.* As discussed in the preamble to the July 14, 1986 final hazardous waste tank system rulemaking, unsaturated zone monitoring could be utilized in lieu of secondary containment and leak detection only through a successful variance demonstration in accordance with § 265.193 (g) and (h). The Agency is aware that unsaturated zone monitoring may be effective in early detection of releases from a tank system in certain situations where a combination of volatile hazardous waste, porous-backfill material, and proper installation techniques are particularly well suited to unsaturated zone monitoring technologies. The Agency solicits information on whether there are classes of tanks containing specific hazardous wastes that are amenable to unsaturated zone monitoring to provide prompt detection of leaks, even in the absence of secondary containment. The Agency is also seeking information on whether there are hazardous wastes generated and accumulated in tank systems by 100–1,000 kg/mo generators that are sufficiently volatile or exhibit other physical or chemical properties such that existing unsaturated zone monitoring technology has been demonstrated to be effective (i.e., capable of detecting in specific or most environmental settings, quickly enough to enable corrective measures which would prevent significant impacts on human health or the environment).

e. *Conditional Insurance Variance.* The Agency recognizes that the insurance industry exercises some degree of regulation when it establishes conditions and rates for providing environmental impairment and corrective measure coverages. EPA seeks comments on the ability of 100–1,000 kg/mo tank system accumulators to obtain such insurance at affordable rates, even in the absence of federal secondary containment requirements, and on whether the conditions for such coverage would assure the Agency that no significant risk to human health and the environment would be posed by 100–1,000 kg/mo generators who obtained and maintained insurance coverage. Do some or all 100–1,000 kg/mo accumulation tank systems pose small enough risks that the insurance industry would be willing to provide coverage at affordable rates? What amount of coverage might be available, affordable, and sufficient to serve as an alternative to secondary containment? Is the viability of this alternative different for new tank systems than it is for existing tank systems?

f. *Alternative Variance Mechanisms and Submission Deadlines.* In accordance with today's proposal, 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems could seek a variance from the secondary containment requirements by submitting to the Regional Administrator either a demonstration that an alternative tank system design and operation would provide protection equivalent to that provided by secondary containment or a demonstration that no substantial present or potential risk would be posed by a release from the generator's tank system (see § 265.193 (g) and (h)). However, the no substantial present or potential risk opportunity for a variance does not apply to new underground tank systems because of the leak detection requirement contained in section 3004(o)(4) of RCRA.

While the Agency has been unable to identify any additional justifiable bases for granting 100–1,000 kg/mo generators a variance from the secondary containment requirements, the Agency seeks comments on the appropriateness of the equivalent technology and the no substantial risk bases with regard to 100–1,000 kg/mo accumulators. Comments and information on additional bases for supporting such variances are also requested.

Furthermore, EPA invites comment on its assumption that most 100–1,000 kg/mo generators will not choose to seek a

variance from the secondary containment requirements in accordance with § 265.193 (g) and (h). Is there information that would counter this assumption? Could these generators file a sufficient number of notices of intent to seek a variance and submit actual variance requests that would overwhelm EPA's and the States' ability to process them in a timely fashion? Would different submission deadlines avoid such a possibility?

g. *Delayed Effective Dates.* Another option presented in the August 1, 1985 proposal was to delay the effective date of secondary containment requirements for these generators. As discussed in section III.C.4. below ("Effective Dates"), the Agency is proposing to apply the same phase-in requirements to 100–1,000 kg/mo generators as it is applying to other generators. The Agency requests comment on the specific circumstances applicable to 100–1,000 kg/mo generators that may warrant a delay in effective dates. EPA also requests comment on its assumption that there is an adequate supply of reasonably priced technical professionals able to assist 100–1,000 kg/mo generators in complying with these proposed rules. Specifically, EPA would like to know whether the demand for these professionals will overwhelm the supply as a result of the large number of 100–1,000 kg/mo generators that would be brought under the tank system regulations, even though generators would be subject to a later implementation schedule.

h. *Site-Specific Effective Dates.* The Agency also requests comment on whether it should provide site-by-site effective dates for installing secondary containment. EPA recognizes that some 100–1,000 kg/mo generators are likely to have tank systems not subject to Subpart J, some of which may be used to accumulate used oil and others which may be used to store substances subject to regulation under RCRA Subtitle I. Are multiple tank systems for hazardous wastes, waste oil, and regulated substances at the same facility more common for 100.1,000 kg/mo generators than for larger quantity hazardous waste generators? Will any unreasonably high implementation costs arise if the hazardous waste tank system rules go into effect before rules governing waste oil and regulated substances go into effect (e.g., costs of piping and controls for all tank systems located in the same excavation trench)? Should the fact that regulatory strategies, other than secondary containment, may well be adopted by the Agency for generators of recycled used oil or regulated substances under Subtitle I of RCRA cause the Agency to defer promulgating standards applicable to 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems until such time as it can promulgate a full set of standards regarding accumulation or storage of RCRA regulated materials by these generators?

i. *Inspection and Assessment Frequencies.* If, based upon information available to the Agency including comments and information submitted in response to this proposal, the Agency determines that secondary containment of tank systems for accumulation of hazardous waste by 100–1,000 kg/mo generators is necessary for protection of human health and the environment, there may still be specific associated requirements that could be relaxed for these hazardous waste generators. The Agency invites comment and information that would support requirements for less frequent inspections or assessments that must be conducted on all existing tanks. For example, the Agency would consider requiring less frequent than annual tank system integrity assessments. Information should be submitted to show that reducing the frequency would not result in significant risk from undetected releases. EPA will also consider less frequent than daily inspections of tank system for leaks. The Agency also invites comment on its current estimates of the economic burden imposed as a result of today's proposed requirements regarding integrity assessments and leak inspections.

j. *Reduced Administrative Requirements.* There are a number of recordkeeping and reporting requirements that accompany the proposed technical standards and that the Agency would consider modifying if shown to be unduly burdensome or unnecessary for proper implementation of the technical requirements. For example, the Agency would consider waiving or modifying the requirement that generators maintain an operating log of all assessments and leak inspections.

2. Risk Analysis

This proposed rule for generators of 100–1,000 kg/mo hazardous waste tank systems is supported by a risk analysis of a variety of hazardous waste storage tank systems that was published by EPA on March 17, 1986 (51 FR 9072). The analysis compared five regulatory strategies for mitigating health threats from leaking hazardous waste storage tank systems. The analysis indicates that secondary containment with leak detection appears to be the most effective method for reducing risks associated with hazardous waste tank systems, including the 180- (or 270-) day accumulation tank systems of generators of 100–1,000 kg/mo. Based on the risk analysis results for all appropriate hazardous waste tank systems, waste streams, and hydrogeologic setting combinations, the possible regulatory strategies are ranked in descending order of protectiveness: (1) Secondary containment with leak detection; (2) partial secondary containment and groundwater monitoring; (3) leak testing and groundwater monitoring; (4) corrosion protection without leak detection; and (5) existing regulation, which serves as a baseline.

The analysis of all five regulatory scenarios allowed comparison between the range of risks posed by hazardous waste tank systems as they are currently being managed and under technical requirements set forth in the proposed regulations. The estimated relative risks posed by 100–1,000 kg/mo hazardous waste accumulation tank systems were lower than from other types of tank systems considered in the Hazardous Waste Tanks Risk Analysis. Nevertheless, the analysis indicated that short-term accumulation tank systems of generators of 100–1,000 kg/mo did pose some risk.

In addition, the Agency conducted a supplementary analysis to examine the effectiveness of unsaturated zone monitoring for hazardous waste tanks. In evaluating the reliability of unsaturated zone monitoring, the Agency assumed: (1) That the tank is a carbon steel underground tank containing the highly volatile waste stream dichloromethane; (2) that the tank is located in a homogeneous backfill of known permeability; (3) that the ground water table is deep enough to allow detection of the leak prior to ground water contamination; (4) that the composition of the waste stored in the tank does not vary over the time that unsaturated zone monitoring is used; (5) that the monitoring well is located two feet from the tank; and (6) that the tank owner/operator can afford periodic clean up and repair or replacement of the tank. Overall, these assumptions result in an evaluation of unsaturated zone monitoring in ideal situations which include proper installation and operating conditions.

Given assumptions such as these, the supplementary analysis indicates that unsaturated zone monitoring is nearly as effective as secondary containment in appropriate situations. However,

because its effectiveness is limited to the specific conditions mentioned above, EPA believes it would have been inappropriate to assess its use for the general range of conditions under which the other regulatory options were evaluated. As a result, the Agency has not included unsaturated zone monitoring in the overall risk reduction ranking scheme with the other regulatory alternatives.

The tank system risk analysis model that supports this proposed rule requires a large number of variables as inputs to the model. These variables include waste stream characterization, tank management, and hydrogeologic conditions.

Typical waste streams for generators of 100–1,000 kg/mo were identified from a survey of 100–1,000 kg/mo generators conducted by EPA.[1] Waste streams with similar toxicities and concentrations were consolidated to simplify the risk analysis. The waste streams modeled were: (1) Spent solvents, ignitable wastes, and ignitable paint wastes; (2) waste pesticides, pesticide washing, and rinsing solutions; (3) heavy metal wastewater sludges, cyanide wastes, spent plating wastes, and other reactive wastes; (4) photographic wastes, solutions, and sludges with photo silver; (5) waste ink with solvents or heavy metals, and ink sludges with chromium or lead; (6) strong acid or alkaline wastes; (7) filtration residues from dry cleaning; and (8) wood preservative wastewaters. The waste streams were identified from the Agency's survey of 100–1,000 kg/mo generators.[2] The exact constituents and relative concentrations were obtained, for the most part, from information contained in the OSW docket report, *Economic Analysis of Resource Conservation and Recovery Act Regulations for Small Quantity Generators*, which was supported by the RCRA Risk-Cost Analysis Waste Stream Data Base (July 1984) (commonly referred to as the W–E–T Model Data Base) and the TRW Analysis.[3] [4]

The survey of 100–1,000 kg/mo generators identified a large number of generators of 100–1,000 kg/mo who utilize hazardous waste tank systems. Auto repair, services, and garages accounted for 33 percent of the 100–1,000 kg/mo generators storing hazardous wastes. Auto dealers and gasoline service stations accounted for an additional 32 percent of those establishments.

No other two digit SIC (Standard Industrial Code) industry groups accounted for more than 5 percent of the generators of 100–1,000 kg/mo using tank systems to store hazardous waste. Approximately 4 percent of the generators of 100–1,000 kg/mo using tank systems to store hazardous waste were in the painting, paperhanging, and decorating industry, 3 percent were in the primary metals industry, and about 2 percent each were in photofinishing, trucking, and printing and publishing. These data indirectly affect the risk analysis results by determining the waste streams and constituents that were modeled. The Agency is requesting comment on the validity of these data and their effects on the risk analysis for 100–1,000 kg/mo generators of hazardous waste.

While the industries generating 100–1,000 kg/mo of hazardous waste were identified by the Agency's small quantity generator survey, the exact characteristics of these establishments were not always identified. The number of generators of 100–1,000 kg/mo using tank systems was estimated to be 11,388 with 4,745 facilities having tank systems above ground, 4,935 having tanks underground, and 1,708 having tanks both above and below ground. Each establishment was assumed to have two tank systems for a total tank system population of approximately 23,000. All tank systems were assumed to be operated for short-term accumulation.

A variety of materials may be used to construct tanks (e.g., carbon steel, fiberglass-reinforced plastic, concrete) and tanks may be located in a variety of locations (e.g., above ground on cradles or ongrade, completely underground, partially underground). For the risk analysis, the accumulation tank systems of generators of 100–1,000 kg/mo were assumed to be constructed of carbon steel, located either above ground on cradles or completely below ground. The tanks were assumed to be small capacity tanks holding 200 gallons and to contain wastes stored for 180 days, the maximum time allowed in the proposed and final regulations for these generators without requiring interim status or a storage permit.

Releases were assumed to result from any of five generic release types: (1) Catastrophic events, (2) rupture of tank components, (3) corrosion of system components, (4) overflows during tank filling, and (5) spills over a 20-year time horizon. For underground tanks of 100–1,000 kg/mo generators, 80 percent of the modeled scenarios experienced tank corrosion failure, 60 percent of the scenarios experienced weld or gasket failure, and 30 percent of the scenarios experienced loose hose connections. For above-ground tank systems of generators of 100 to 1,000 kg/mo, 74 percent of the scenarios experienced weld or gasket failures of piping, 48 percent experienced overfilling, 44 percent of the scenarios experienced tank corrosion, and 34 percent experienced loose hose connections.

In the risk analysis for tank systems of 100–1,000 kg/mo generators, approximately 48 percent of the risk estimates for above-ground tanks, assuming the baseline case (i.e., current rules), are associated with estimable risk (i.e., some risk to human health is likely). This contrasts with approximately 13 percent nonzero risk estimates for the same tank systems assuming secondary containment with leak detection. Results for underground tank systems are similar to above-ground tank systems with the baseline case having nonzero risk associated with 56 percent of the risk estimates. Secondary containment, on the other hand, was associated with nonzero risk estimates for approximately 5 percent of the risk estimates.

These risk estimates should not be interpreted as absolute risks because there were few data to confirm or refute certain assumptions made in the analysis. Some of the more significant areas of uncertainty are the following: (1) The failure model release estimates; (2) the use of nine generic ground water settings with representative parameters; (3) waste constituent quantities and concentrations; (4) the use of a single exposure distance of 60 meters from a hazardous waste tank; and (5) the assumption that the exposed individual uses the same source of ground water over a 70-year lifetime.

Although the risk results should not be interpreted as absolute, the analyses are useful for comparisons between regulatory alternatives and their associated magnitudes of risk. In this manner, the risk analysis provides an indication of whether risks are likely to be significant (a substantial proportion of risk estimates are non-zero), and which regulatory alternative is most effective at reducing risk.

EPA invites comment on the general accuracy and completeness of the analysis for hazardous waste tank systems of 100–1,000 kg/mo generators and invites comment on the nature of

[1] National Small Quantity Hazardous Waste Generator Survey. Abt Associates, Cambridge, Mass. February 28, 1985.

[2] Ibid.

[3] ICF Incorporated, Development Planning and Research Associates, Inc., and Pope-Reid Associates (June 1985).

[4] TRW Environmental Engineering Division. *Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators*, Vol. II, December 1979.

hazardous waste tank systems of 100–1,000 kg/mo generators that would affect the Agency's interpretation of the risk analysis results. Specifically, EPA is requesting comment concerning the assumptions about: (1) Number of tank systems of 100–1,000 kg/mo generators by industry; (2) waste types and concentration stored in these tank systems; (3) the size of these tank systems; (4) the location of these tank systems (e.g., above ground, underground); (5) their proximity to drinking water wells (e.g., 200 feet downgradient of the tank system); (6) tank system age, design, and operating practices; and (7) tank system failure causes and rates.

EPA has already received comments on the Hazardous Waste Tanks Risk Analysis, which are addressed in a background document to the final tank system rule promulgated on July 14, 1986. Some commenters suggested new data or new tools for conducting such a risk analysis. This section provides a brief discussion of the information provided by commenters and the Agency's current views on the adequacy and relevance of the information in this rulemaking. The Agency will carefully consider these comments along with others received in response to today's proposal.

a. *EPRI Model.* One of the commenters suggested that the Electric Power Research Institute (EPRI) Underground Tank Risk Management System model be used to replace or supplement the Hazardous Waste Tank Risk Analysis. The Office of Solid Waste and the Office of Underground Storage Tanks have reviewed this model in terms of applicability to the hazardous waste tank system and underground product storage tank programs. This model only examines the costs associated with managing an underground tank system and does not consider risk to human health and the environment. Thus, while the EPRI model may be well-suited for specific facility management decisions, it has not been adopted by the Agency. In addition to the model's failure to consider health and environmental risk, the model: (1) Does not provide new performance data on tank systems or safety technologies; (2) examines only cost impacts of underground carbon steel petroleum tanks leaking due to corrosion (there are many other tank types and failure mechanisms); and (3) faces the same difficulties the Hazardous Waste Tank Risk Analysis Model faced in trying to examine the population of hazardous waste tank conditions (i.e., aggregation requires simplifying assumptions with respect to hydrogeologic setting, tank characteristics, and waste characteristics).

The "Risk" portion of the model's title refers to the risk of incurring tank management *costs*, not to the risk of posing adverse human health and environmental impacts. The EPRI model's specific purpose is to aid a facility with an underground storage tank in minimizing the cost of using that tank over the *facility's* planning horizon. For example, the EPRI model can compare the cost of immediately replacing a tank with a double-walled tank to the cost of replacing that tank sometime in the future plus the cost of necessary corrective action that may result during the period prior to replacement. The model does not assess risks to human health and the environment prior to completion of corrective action, and it is not reasonable to assume that there are no risks to human health and the environment regardless of the length of time required to correct a contamination event. Thus, the model is not suitable for the Agency's determination of whether and how hazardous waste tanks pose risk to human health and the environment or what technologies are available that adequately protect human health and the environment.

b. *Generator Spent Solvent Waste Stream Characterization.* One commenter disagreed with EPA's characterization of 100–1,000 kg/mo generator spent solvent wastes. The commenter asserted that the Agency did not use readily available data sources such as EPA's WET model. This assertion is apparently based on a misunderstanding of the Agency's methodology for characterizing waste streams associated with 100–1,000 kg/mo generator accumulation tank facilities.

In order to characterize 100–1,000 kg/mo generator waste streams, EPA used the National Small Quantity Generator Survey to determine the industries that have 100–1,000 kg/mo generators with tanks. To determine the waste streams associated with generators in these industries, EPA used the study, *Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators.*[5] The appendices for this study provide waste characterization data for 100–1,000 kg/mo generators by industry. With this information and a supplementary literature search, EPA identified 40 solvent constituents associated with 100–1,000 kg/mo generators within the SICs identified in the Small Quantity Generator survey.

Of these 40 solvent constituents, 14 were identified as RCRA-listed wastes and were associated with from 2 to 10 SICs identified by the Small Quantity Generator survey. EPA then characterized the physical properties (e.g., constituent mass fraction) of these 100–1,000 kg/mo generator related RCRA-listed solvents based on the existing WET model data base.

The information available to EPA on the constituents of waste solvents is limited in scope and may not be a representative sample of the solvent wastes produced by the whole spectrum of 100–1,000 kg/mo generators. However, it is specific data obtained from some generators of waste solvents and, therefore, gives an indication of constituents likely to be present in solvent wastes. EPA believes that the waste characterizations used in the risk analysis for 100–1,000 kg/mo generators are appropriate. However, EPA requests additional data to improve its waste characterizations for these generators.

In contrast to the mostly anecdotal data and information provided by commenters on the risk analysis, the Agency encourages commenters to be as specific as possible, including, when available, actual constituent analyses of solvent waste streams generated by 100–1,000 kg/mo generators.

c. *Use of 60 Meter Exposure Distance.* Numerous commenters disagreed with the Agency's use in the risk analysis of a standard distance of 60 meters (200 feet) between the drinking water well and the hazardous waste tank system. In order to estimate risk from hazardous waste tank systems, EPA used an existing land disposal risk model that provides three standard exposure distances (60 m, 600 m, and 1500 m). EPA examined available data sources to estimate more appropriate well distances for hazardous waste tank systems. In particular, EPA examined the Federal Reporting Data System (FRDS) maintained by EPA's Office of Water.

From this examination, EPA determined that the FRDS cannot be used to provide feasible estimates of potentially exposed populations because: (1) The well and water intake locations specified as the centroid of the mailing address zip codes are not reliable estimates of exposure locations; (2) FRDS does not contain information on the location and drinking water population associated with private wells; and (3) the reported drinking water population represents the total population drinking either surface or ground water obtained directly, or

[5] Ibid.

purchased from elsewhere, by the *water supply system.*

In addition to the inability to estimate the location of water supply systems and ground water sources used for drinking water, EPA has no readily available data on the specific locations of the approximate 5,500 storage, 3,600 treatment, 6,400 accumulation, and 11,388 100–1,000 kg/mo generator tank facilities. While the Office of Solid Waste Mail Survey contains the street address and zip codes of a sample of storage, treatment and accumulation tank facilities, there are no similar data for the 100–1,000 kg/mo generator tank facility population.

Thus, as a result of data limitations and time constraints, EPA made the conservative assumption that the exposure distance is 60 meters. While this assumption is conservative, the model does not account for the damage that results from contamination of a valuable ground water resource. In addition, the model underestimates potential ground water contamination impacts since it does not examine tanks located in the ground water or multiple tanks above the same aquifer.

It is important to note that while longer well distances may reduce health risk estimates, the longer the well distance, the more extensive the ground water contamination prior to eventual detection at the drinking water well. Once contamination reaches the ground water, regardless of the extent of the contamination plume, the corrective action costs of ground water treatment are likely to be excessive.

3. Economic Analysis

The results of the economic impact analysis that the Agency has relied upon in today's proposal (see Appendix A) indicate that most 100–1,000 kg/mo generators will not be significantly affected by the proposed tank system requirements. The Agency evaluated the impact of eleven different regulatory scenarios on model firms generating 100–1,000 kg/mo of hazardous waste. The scenarios varied in terms of phase-in requirements (15 and 20 years), administrative requirements, and frequency of integrity assessments. The overall results showed that, at most, 6 out of 84 model firms would be significantly impacted by the proposal or any one alternative regulatory scenario. However, as discussed earlier, varying the frequency of integrity assessments would reduce impacts significantly, while reducing administrative requirements would have a negligible effect. The Agency requests comment on whether it would be appropriate to vary either of these requirements, and requests information to support the comments. Specifically, the Agency requests comments and information on whether promulgating the rules as proposed would have severe economic impacts on particular segments of 100–1,000 kg/mo generators, and whether reducing the frequency of integrity assessments would reduce such impacts. In addition, the Agency requests comment on whether any administrative requirements are overly burdensome in terms of cost or paperwork required, and if they can be reduced or eliminated without severely compromising the protectiveness of the technical standards.

The Agency based its analysis on certain assumptions and information available to it, as described more fully in Appendix A. Comment is invited on the validity of these assumptions and the information used, and commenters are requested to submit specific information to support any different conclusions they may have.

4. Effective Dates

The final rule published in the July 14, 1986 **Federal Register** establishing new standards for hazardous waste tank systems will take effect on January 12, 1987, 180 days after the publication date. For one of the major requirements of the final rule, secondary containment for hazardous waste tank systems, EPA has adopted a phased implementation approach. For existing tank systems without secondary containment that meet the rule's requirements, an assessment of the tank system's integrity is required by January 12, 1988. The final rule requires that leaking tanks be repaired or replaced and, if underground or not subject to visual inspection, provided with secondary containment before being brought back into service. Other existing tank systems are required to have secondary containment within two years of the date of promulgation of the final rule if storing or treating dioxin-containing wastes or, in the case of other hazardous wastes, within two years or by the time the tank system reaches 15 years of age, whichever comes later. In the event that the age of the tank system is unknown, EPA will assume, based on its study of the age distribution of hazardous waste tanks, that the tank is seven years old, the median age of all hazardous waste tanks, unless the facility is known to be older than seven years of age. In the latter instance, secondary containment would be required within two years, or by the time the facility reaches 15 years of age, whichever comes later.

Generators of 100–1,000 kg/mo of hazardous waste subject to the rules proposed today will likely need at least as long as other tank system owners and operators to comply with the rules; therefore, the Agency proposes that the phased implementation for these generators be based on the future date of final tank system rules governing accumulation tanks of generators of 100 to 1,000 kg/mo. Under the terms of today's proposal, therefore, 100–1,000 kg/mo generators who utilize tank systems for accumulation of their hazardous wastes will be provided the same number of months after promulgation of this proposal as a final rule as those hazardous waste generators subject to the July 14, 1986 final tank system rules are afforded.

5. Request for Comments

EPA is concerned about the limited amount of data available on accumulation tanks of 100–1,000 kg/mo generators. As noted above in several locations in this preamble, EPA requests additional data to improve its information base. To the extent possible, data and information provided to EPA should distinguish between new and existing accumulation tank systems. In addition, EPA seeks information on the current prevalence of secondary containment for 100–1,000 kg/mo generator accumulation tank systems, categorized by hazardous waste type and production process. If these data alter EPA's basic conclusions regarding secondary containment, EPA will carefully consider promulgating regulations that embody one or more of the options discussed above.

D. Regulation of Underground Product Storage Tanks Under Subtitle I (The UST Program)

EPA has received a number of comments expressing concern that the final hazardous waste tank system rules would establish a precedent for the UST rules when they are promulgated. The same concern may apply to this proposed rule, which would subject generators of 100–1,000 kg/mo to the same requirements imposed on 90-day accumulators by the final rule. Many 100–1,000 kg/mo generators who have hazardous waste tank systems also have underground storage tanks that will be subject to RCRA Subtitle I rules (e.g., gasoline service stations).

In the preamble to the June 26, 1985 proposed rule, EPA cautioned against concluding that the proposed rules would establish precedents for the Agency's effort to regulate, under Subtitle I of RCRA, underground storage

tanks containing "regulated substances." EPA explained that, in fact, "the requirements proposed today [i.e., June 26, 1985], as they apply to underground hazardous storage tanks, may be significantly different in many ways from the standards that will be developed in the future for underground tanks storing regulated substances." (50 FR 26490; June 26, 1985.) Regulations governing underground storage tanks are being developed separately from the hazardous waste tank regulations.

Differences in statutory language, the number of tanks to be regulated, the regulatory framework, and forthcoming information about technical options and their reliability may cause regulations for underground storage tanks to differ from those for hazardous waste tank systems. For example, whereas the development of regulations for Subtitle C tank systems is based solely on the criterion of protection of human health and the environment, Subtitle I specifically authorizes EPA to distinguish between different types of tanks and to consider other factors such as current industry practices, national consensus codes, the technical capability of tank owners and operators, and small business considerations (RCRA Section 9003(b)). The underground storage tank regulations will apply to over 1,000,000 tank systems, a vastly greater universe than the hazardous waste tank systems universe. In addition, Subtitle I does not require implementation of a permit system, a difference which may lead to a different regulatory approach. Currently, the Agency is actively studying methods of detecting leaks from tank systems. Results from these studies may indicate that leak detection methods whose reliability is not yet established (e.g., soil gas monitoring in the unsaturated or excavation zone) may be found to be reliable before the underground storage tank regulations are issued. Finally, the Agency may take a different approach to regulating product storage if EPA determines that particular products, because of their value, are managed more reliably than hazardous wastes.

E. Relationship of Proposed Regulation to Section 3014 of RCRA (Used Oil)

The Congress, in passing the Used Oil Recycling Act of 1980 (Pub. L. 96–463) and the Hazardous and Solid Waste Amendments of 1984, supplemented the basic requirements for regulation of hazardous waste with certain special requirements for recycled oil. These requirements are found in RCRA section 3014. Section 3014(a) retains the language of section 7(b) of the Used Oil Recycling Act:

> [T]he Administrator shall promulgate regulations . . . as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil.

Section 242 of the 1984 Amendments also added the following phrase to the end of the above paragraph, "consistent with the protection of human health and the environment" to make it clear that such protection is of prime concern under section 3014, and that certain recycling practices may indeed be discouraged by regulation if necessary to ensure an adequate level of protection. (See H.R. Conf. Rep. No. 1133, 98th Cong. 2d Sess. 114 (1984).)

Section 3014(b) requires the Administrator to propose whether to list or identify used crankcase oil and other used oil as a hazardous waste under section 3001 of RCRA. EPA has proposed to list all used oil as a hazardous waste (50 FR 49258–49270, November 29, 1985) and has also proposed management standards for used oil generators, transporters, and recycling facilities (50 FR 49250–49258, November 29, 1985).

In proposing to list used oil as a hazardous waste and in developing management standards associated with the recycling of hazardous waste, EPA has attempted to take into account the effects such listing and standards will have on the ultimate disposition of used oil. The objective of the proposed regulations was to establish standards for the recycling of used oil that are most protective of the environment while not creating significant disincentives or barriers to the practice.

In keeping with the stated objective of section 3014 of RCRA to not discourage recycling, while ensuring protection of human health and the environment, EPA proposed a special, reduced set of storage standards for recycled oil generators to minimize adverse small business and recycling impacts. EPA also proposed different and less stringent standards for small quantity recycled oil generators who may generate up to 1,000 kg/month of used oil and do not accumulate used oil in quantities exceeding 1,000 kg. In the preamble to the proposed used oil management standards, EPA explained that such reduced standards for small quantity recycled oil generators would offer the following benefits: (1) Reduce economic impacts on small businesses; (2) facilitate recycling; and (3) encourage small quantity recycled oil generators to recycle used oil rather than dispose it in a manner that may threaten human health and the environment.

Although the proposed regulation would generally reduce standards for storage of recycled oil, if promulgated as proposed, it would require that full secondary containment apply to tank systems at non-generating facilities storing such used oil. At this time, however, the rules are still in proposed form and EPA is in the process of evaluating comments submitted during the public comment period. The comments received were extensive, and have caused EPA to consider alternatives to the proposed regulation. In particular, EPA issued an extension to the public comment period in the March 10, 1986 **Federal Register** (51 FR 8206). In that notice, EPA solicited additional comment on a regulatory approach suggested by several commenters: list used oil as a hazardous waste only if it is disposed rather than recycled. EPA is in the process of evaluating the additional comments received from this notice. EPA is particularly concerned about the impact on used oil recycling that would occur as a result of the proposed management standards and the proposed listing of used oil as a hazardous waste. EPA is also concerned about the impact of a used oil listing on insurance costs, as it would affect used oil recycling, as well as the effect of the proposed management standards and listing on the overall risks to human health and the environment posed by used oil recycling and/or disposal practices.

Today's proposed rule does not address storage or treatment of used oil; rather, used oil management standards will be included in the used oil regulations scheduled to be issued later. That regulatory package will address all applicable tank system standards for the storage of recycled used oil.

F. Explanation of Proposed Regulatory Language

The regulatory amendments proposed today would subject 100–1,000 kg/mo generators to the same requirements imposed on 90-day accumulators in the July 14, 1986 final tank system rules. The Agency offers below a detailed explanation of the proposed regulatory language.

As part of the final regulations promulgated on March 24, 1986, for 100–1,000 kg/mo generators (51 FR 10146), the Agency required compliance with existing 40 CFR Part 265, Subpart J by

generators who accumulated hazardous waste in tanks for 180 (or 270) days (see 40 CFR 262.34(d)). Such generators would have become subject to the following sections on the September 22, 1986 effective date: 40 CFR 265.190, 265.192, 265.194, 265.197, 265.198, and 265.199. As a result of the July 14, 1986 final amendments to 40 CFR Part 265, Subpart J, these listed sections no longer contain the same regulatory requirements as they did on March 24, 1986. For this reason, the newly promulgated Subpart J amendments include a new § 265.201, designated as Special Requirements for Generators of between 100 and 1,000 kg/mo that accumulate in tanks. This new section contains all those above listed sections of Subpart J (i.e., §§ 265.190, 265.192, 265.194, 265.197, 265.198, and 265.199) as they existed on March 24, 1986.

In effect, the July 14, 1986 final amendments to § 262.34 and Part 265, Subpart J continue to subject 100–1,000 kg/mo generators who accumulate hazardous waste in tanks for 180 (or 270) days to the same regulatory requirements as were imposed by the March 24, 1986 regulations, even though the requirements have now been recodified.

The amendments discussed in today's proposal would amend the regulatory language of § 262.34(d)(3) to parallel the language of § 262.34(a)(1), which subjects 90-day accumulation facilities to most 40 CFR Part 265, Subpart J standards. The amended subsection would also provide that generators of 100–1,000 kg/mo must comply with the requirements for tank system integrity testing (§ 265.191) and secondary containment (§ 265.193) based on the date of final promulgation of this proposed rule for 180- (or 270-) day accumulation tank systems. In addition, new § 265.201 is proposed to be deleted, because it would no longer be needed once today's proposed rules become final.

IV. Impact on Authorized States

A. Applicability in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (see 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames; however, the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions, including the issuance of permits, in authorized States until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

EPA is issuing today's proposed regulations pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, if promulgated as a final rule, it would be added to Table 1 in 40 CFR 271.1, which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA would implement the standards in authorized States until they revise their programs to adopt these rules and the revisions are approved by EPA. Because this rule would be promulgated pursuant to HSWA, a State submitting a program modification would be able to apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 FR 21678, May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying 40 CFR 271.21(e)(2), States that have final authorization must modify their programs within one year from the date of promulgation of EPA's regulations if only regulatory changes are all that are necessary, or within two years if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations could be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

V. Regulatory Impact Analysis

The Agency undertook an analysis of the proposed hazardous waste tank system regulatory requirements as they apply to generators of 100–1,000 kg/mo with new or existing accumulation tank systems to determine the extent of associated cost and economic impacts on the regulated community. These analyses also provided the Agency with the necessary information for determining whether the revisions will constitute a major rule under Executive Order 12291 or have significant impacts on a substantial number of small businesses as the Agency is required to consider under the Regulatory Flexibility Act.

The discussion in Appendix A summarizes the methodology and results of the analyses supporting these findings. Further detail of the cost and economic analyses for the proposed 100–1,000 kg/mo generator accumulation regulations for hazardous waste tank systems can be found in the docket report, *Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Accumulation Tank Regulations for 100–1,000 kg/mo Generators.*

The results of EPA's regulatory impact analysis for this proposed rule indicate that overall output, employment, and price-level effects from the regulations should be insignificant, although adverse effects may be felt by some individual firms. Based on the analyses, the Agency does not anticipate that requiring secondary containment for new or existing accumulation tank systems utilized by 100–1,000 kg/mo generators will result in significant financial impacts. At most, the results indicate that 6 out of 84 model firms may be significantly affected. The results of the analysis (Appendix A) indicate that these revisions to the rule do not constitute a major rule under Executive Order 12291.

VI. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB, marked "Attention: Desk Officer for EPA." The Agency will respond to any OMB or public comments on the information collection requirements prior to promulgation of the final rule.

VII. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

EPA has conducted an analysis of the impacts of today's proposed tank system rules on small businesses, which is included in the Economic Impact Analysis Report (EIAR) and discussed in section V of this preamble. The EIAR is available for public viewing in the docket for today's rulemaking. On the basis of the analysis conducted, EPA has determined that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

VIII. Supporting Documents

In preparing this proposed regulation, the Agency has used many sources of information, including those used in preparing the final Hazardous Waste Tank System Rule, published in the **Federal Register** on July 14, 1986. Of these, the most significant for this proposed regulation are listed below. They have been placed in the rulemaking docket at U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

In addition to sources of information used in preparing the final Hazardous Waste Tank System Rule, the following sources of information are also available for viewing only at the EPA RCRA Docket:

1. National Small Quantity Hazardous Waste Generator Survey, Abt Associates, Cambridge, Mass. February 28, 1985.
2. National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981, Office of Solid Waste, April 1984.
3. Economic Analysis of Resource Conservation and Recovery Act Regulations for Small Quantity Generators, ICF Incorporated, Development Planning and Research Associates, Inc., and Pope-Reid Associates (June 1985).
4. Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Accumulation Tank Regulations for 100–1,000 kg/mo Generators, ICF Incorporated and Development Planning and Research Assoc., Inc. (August 1986).
5. Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators, Vol. II, TRW Environmental Engineering Division, December 1979.

List of Subjects

40 CFR Part 262

Intergovernmental relations, Hazardous materials, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 265

Intergovernmental relations, Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 271

Intergovernmental relations, Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Penalties, Confidental business information.

Dated: September 30, 1986.

Lee M. Thomas,

Administrator

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations, as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

40 CFR Part 262 is amended as follows:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3001, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6921, 6922, 6923, 6924, 6925, and 6938).

2. In § 262.34 paragraph (d)(3) is revised to read as follows:

§ 262.34 Accumulation time.

* * * * *

(d) * * *

(3) The generator complies with Subpart J of 40 CFR Part 265, except § 265.197 (c), (d), and (e) and § 265.200 and except that § 265.191 shall be effective (insert date that is 12 months after the effective date of these revisions to the regulations) and that the January 12, 1987 date for the provision of secondary containment under § 265.193(a) (2), (3), (4) and (5) shall be replaced by (insert effective date of these revisions to the regulations).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

3. The Authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905 6912(a), 6924, 6925, and 6936).

§ 265.201 [Removed]

4. 40 CFR Part 265 is amended by removing § 265.201.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

6. In § 271.1, paragraph (j) is amended by adding the following entry to Table 1

in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	Federal Register reference
* *	* *	* *
Oct. 9, 1986	Hazardous Waste Accumulation Tank System Standards—§ 262.34(d)(3).	51 FR [Insert page citation].
* *	* *	* *

Appendix A.—Economic Analysis—Summary

1. Cost and Economic Impact Methodology

The analyses in the docket report, *Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Tank Regulations for 100–1,000 kg/mo Generators*, are based on the cost estimates for facilities sampled in the Office of Solid Waste Small Quantity Generator (OSW SQG) survey.[6] From the survey data, the Agency estimated the number of 100–1,000 kg/mo generators with tanks, the number of above- or below-ground tanks, the tank sizes, and the number of tanks per establishment. Using these survey results including both primary and secondary SICs, EPA estimated that there are about 11,400 generators of 100–1,000 kg/mo with hazardous waste tank systems.

This total number of 100–1,000 kg/mo tank establishments represents 4,745 establishments with above-ground tank systems, 4,935 establishments with below-ground tanks, and 1,708 establishments with above-ground and below-ground tanks.

Although the SQG survey was not structured to be statistically reliable when only examining establishments with tank systems, the data are useful for assessing general trends. According to survey data aggregated at the two digit SIC level, approximately 33% of 100–1,000 kg/mo tank establishments are Auto Repair, Services, and Garages and approximately 32% are Automotive Dealers and Service Stations. No other two digit SIC level activity accounts, individually, for greater than 5% of 100–1,000 kg/mo tank establishments.

The survey data do not provide information on the number of tank systems per establishment. Therefore, considering the small number of hazardous waste streams and low quantities of hazardous waste generated by generators of 100–1,000 kg/mo, EPA assumed that there would be a maximum of two tank systems per establishment. The survey data also do not provide direct information on tank sizes used by generators of 100–1,000 kg/mo. The Agency estimated tank sizes as the product of the average quantity of waste generated at the establishment per month in 1982 to the average length of time (in months) the waste was reported to be stored in the tank for each 100–1,000 kg/mo tank establishment in the survey. As a result, the Agency estimated a typical minimum tank size of 200 gallons. Because EPA assumed two tank systems per establishment, the estimated typical tank capacity is 400 gallons per establishment.

[6] National Small Quantity Hazardous Waste Generator Survey.

The survey data do not provide detailed tank system characteristic information; thus, the Agency based many characteristics for tanks used by 100–1,000 kg/mo generators on the Office of Solid Waste Regulatory Impact Analysis Tank Survey (OSW RIA Tank Survey) storage tank data and on best engineering judgment in order to estimate compliance costs.[7] As a result, the Agency assumed that all 100–1,000 kg/mo generator tanks are carbon steel, all above-ground tanks are cradled, all below-ground tanks are completely buried, and there is 15 feet of piping per tank.

Tank age is a crucial factor in estimating the net present value compliance costs of the proposal. EPA assumed that all tanks used by 100–1,000 kg/mo generators have a typical age of six years for above-ground tanks and seven years for below-ground tanks. This typical age is based on the median ages for the above-ground and underground storage tanks reported in the OSW RIA Tank Survey data base.

EPA estimate incremental compliance costs assuming that all existing 100–1,000 kg/mo generator tank establishments will operate their tank systems as accumulation tank systems to comply with today's proposed rule for 100–1,000 kg/mo generators accumulating hazardous wastes in tanks. Thus, EPA estimated the net present value cost of retrofitting full secondary containment at the time of the appropriate phase-in age (see 40 CFR 265.193(a)) for each tank in the survey sample. During the interim period prior to phase-in of full secondary containment, EPA applied the cost of an annual tank system integrity assessment. For example, 100–1,000 kg/mo generator below-ground tanks are assumed to be 7 years old; thus, the Agency applied the cost of a periodic integrity assessment for 8 years prior to retrofitting with full secondary containment at age 15.

In addition, EPA applied the cost of providing corrosion protection for all replacement steel tanks in contact with the soil. Other regulatory costs include daily inspections of above-ground portions of tanks and recordkeeping of such inspections and periodic integrity assessments. The Agency also estimated the incremental costs of installing a new tank system with full secondary containment.

To examine the impacts on the population of 100–1,000 kg/mo generators, the Agency compared the range of potential compliance costs to model firm financial characteristics. The Agency used model firms for 100–1,000 kg/mo generators because actual financial data for the 100–1,000 kg/mo generators survey sample were unavailable. Financial characteristics were developed for model firms using financial data bases which represented the affected industries. These model firms differ in terms of the types and quantities of wastes generated and in their financial characteristics. Two size categories of model firms were used to represent 42 industries: Establishments with 1–9 employees and those with 10–49 employees.

[7] National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981, Office of Solid Waste, April 1984.

2. Costs and Economic Impacts

EPA estimated total national compliance costs for the proposal in three categories. The first category of compliance costs are the capital costs. Tank facilities may incur these costs in the first year or periodically over the life of the tank. Capital costs are depreciable costs, and an example of such a cost is the secondary containment requirement. Second, EPA estimated operating and maintenance (O&M) compliance costs. O&M costs are incurred by tank facilities periodically during the year. These compliance costs would include periodic inspections of tank system equipment. Finally, EPA estimated annualized costs. Annualized costs represent the capital costs on a yearly basis over the assumed life (20 years) of the tank, plus the O&M costs on an annual basis.

The estimated total capital costs of the proposal for 100–1,000 kg/mo generator tank facilities are about $38.1 million, and the total annualized O&M costs are about $13.5 million. To compare the cost impacts of the proposed requirements to the regulatory alternatives, the Agency annualized total capital and O&M before-tax facility compliance costs by the appropriate industry real cost of capital. The O&M costs are also annualized because such costs vary depending on when secondary containment is phased in. The annualized national before-tax costs equal the sum of the weighted facility annualized total costs. Thus, EPA estimated the total before-tax annualized cost of the proposed requirements for the approximately 11,400 100–1,000 kg/mo generator tank facilities to be about $18.4 million.

Table I presents the facility costs of the proposal for each representative 100–1,000 kg/mo facility type. This table includes the annualized O&M costs, and both before-tax and after-tax annualized total costs. Total after-tax annualized costs are compared against model plant net income data to estimate economic impacts for 100–1,000 kg/mo generator tank facilities. Table II presents the population of 100–1,000 kg/mo generators represented by each facility type and the resulting national cost estimates for the proposal. In addition, the Agency estimated the costs for the 11 regulatory alternatives presented in Table III. Table IV presents the total annualized after-tax costs of these 11 regulatory alternatives.

The costs presented in Table IV indicate that the costs are significantly reduced when lower frequency or no periodic integrity assessments are required. However, the results are mixed if the proposed integrity assessment frequency is retained, but the phase-in age is extended to 20 years old instead of 15 years. Under this scenario, the annualized costs for the facility with one above-ground tank and one underground tank increase slightly. This is a result of the lower capital cost of a longer phase-in not compensating for the increased O&M cost of having to conduct integrity tests on the one underground tank for an additional five years.

This is in contrast to the results for the facility with two underground tanks that benefits from economies of scale for leak

testing multiple underground tanks and larger savings for delaying the installation of secondary containment. Thus, the annualized cost for the two underground tank facility is slightly reduced for the longer phase-in and same integrity assessment frequency as the proposal. Finally, the results in Table IV suggest that administrative costs, such as recordkeeping of daily inspection results, do not substantially contribute to the cost of the proposal.

Table V displays the incremental costs that facilities installing new hazardous waste accumulation tank systems may face under this proposed rule. In addition to the 200 gallon tank that the Agency assumed for the existing tank economic analysis, Table V provides the cost for 550 gallon above-ground and below-ground tanks. The Agency has provided the 550 gallon tank costs to represent those 100–1,000 kg/mo tank facilities that may have only one larger tank, instead of two smaller tanks. These costs represent installing new tanks that comply with the secondary containment requirement.

Because EPA assumes that underground tanks are retrofit with secondary containment by replacement with a double-walled steel tank and double-walled piping, the Agency has included the cost of corrosion protection. EPA assumes that above-ground tanks are mounted on cradles or legs; therefore, the tank is not in contact with the soil and does not require corrosion protection.

The financial effects of the proposed hazardous waste tank system regulations on potentially affected generators of 100–1,000 kg/mo will vary widely from facility to facility depending upon financial strength, quantity of waste, number and type of tank systems, current waste management practices, and changes required to comply with the regulations. Certain generators of 100–1,000 kg/mo, given the variability of their financial strength and potential lack of waste management alternatives, may incur significant adverse financial effects. Because of data limitations, however, it is not possible to determine the frequency of these situations.

In order to examine the potential impacts of the proposed tank system requirements for existing 100–1,000 kg/mo generator tank systems, the Agency developed cost estimates for 11 regulatory scenarios, each of which was subsequently rejected on environmental protection bases, to compare with the proposal. These scenarios vary between phase-in ages of 15 and 20 years old, by whether administrative requirements are imposed, and by the frequency of integrity assessments. Table VI presents the number of model facilities significantly affected for each of the 11 regulatory strategy alternatives.

For each of these scenarios, the Agency estimated annualized after-tax costs for comparison with the model financial characteristics representing small and medium 100–1,000 kg/mo facility sizes in 42 affected industries. The results of this analysis indicate that there is little reason for the Agency to expect significant adverse financial effects for a substantial number of 100–1,000 kg/mo generator tank facilities as a result of the proposal or the alternatives. At most, the results indicate that six out of 84 model firms may be significantly affected.

For the proposal, the annualized compliance costs for the two underground tank facility result in five significantly affected model firms. However, the proposed regulatory costs for the facility with two above-ground tanks did not result in any significantly affected facilities. Finally, the annualized compliance costs for the facility with one above-ground and one underground tank resulted in significant effects on six different types of firms.

For all of the 11 different types of regulatory alternatives, there were no significant impacts for the costs associated with the model facility with two above-ground tanks. This indicates that facilities with cradled tanks can retrofit secondary containment without replacing the tank system and can conduct integrity assessments without incurring major adverse financial impacts.

In addition, no significantly impacted firms were estimated for the regulatory alternatives where integrity assessments for underground tanks are either not required, or required only every three or five years, rather than every year as proposed. Depending upon the combination of tanks at the facility, the length of the phase-in period will either increase or decrease the associated annualized cost. However, this change is slight and does not result in a significant change in the number of model firms that experience economic impacts. This indicates that the integrity assessment frequency may be a relatively significant cost; and, as a result, there is not a significant cost savings by allowing 100–1,000 kg/mo accumulation tank systems a longer phase-in age of 20 years.

The economic impacts for scenarios including such administrative costs as installation certification and recording of inspections do not vary significantly from the regulatory scenarios exempting these administrative costs, regardless of the phase-in age. These results indicate that such administrative costs are negligible with respect to causing adverse economic impacts.

As a result of this impact analysis, the Agency expects that the phased-in secondary containment requirement alone will not result in any significantly affected generators of 100–1,000 kg/mo, even if the phase-in age were 20 years. If the Agency could have justified a proposed requirement for less frequent underground tank integrity assessments than is proposed, EPA would not have anticipated any significant impacts on firms in general. On the other hand, since the Agency is proposing annual underground tank integrity assessments, whether the phase-in age is 15 or 20 years, EPA expects a few firms to incur significant impacts. However, the Agency does not expect a substantial number of small businesses to incur significant impacts and, therefore, EPA proposes to regulate the 100–1,000 kg/mo generator accumulators the same as currently regulated accumulation tank system facilities.

EPA does not expect any 100–1,000 kg/mo generator plant closures as a result of the hazardous waste tank system regulations. The small model firms (fewer than 10 employees) with net income below $10,000 that may incur significant adverse effects do not do so necessarily because of the magnitude of estimated compliance costs, but because of their relatively low net income or sales in the year analyzed (1983 inflated to 1984). In addition, it is not known how much flexibility these generators of 100–1,000 kg/mo have regarding their hazardous waste management practices (for example, their ability to shift to alternative hazardous waste storage and treatment technologies and the costs of any such alternatives). Actual 100–1,000 kg/mo facilities may have alternatives available to them that are less costly than complying with the hazardous waste accumulation tank regulations in the manner that the Agency has assumed.

The effects of the hazardous waste tank system regulations on 100–1,000 kg/mo generator model plants in the medium employee size category (10 to 49 employees) are not expected to be significant. No model plants in this size category incurred compliance costs that were more than 20 percent of their estimated net income or more than one percent of their estimated sales. The effects of the hazardous waste tank system regulations on any industry with generators of 100–1,000 kg/mo as a whole are also expected to be insignificant for the following reasons:

—Only 10 to 15 percent of generators of 100–1,000 kg/mo across all industries have hazardous waste tank systems;
—Two-thirds of generators of 100–1,000 kg/mo with hazardous waste tank systems have more than 10 employees and, according to our methodology, are less likely to experience adverse financial effects;
—Generators of 100–1,000 kg/mo, particularly those with tank systems, generally represent small portions of industry output and employment; and
—100–1,000 kg/mo generator costs are worst-case scenarios and many firms' hazardous waste management practices, such as off-site recycling and disposal to POTWs, are in compliance or exempt from the hazardous waste tank system regulations.

Thus, overall output, employment, and price-level effects from the regulations should be insignificant, although adverse effects may be felt by some individual firms.

Finally, EPA does not anticipate that requiring secondary containment for new tank systems will result in significant financial impacts. The incremental costs of providing secondary containment for new tank systems, as shown in Table V, are less than the compliance costs for existing tank systems. Thus, EPA expects even fewer impacts for facilities installing new tank systems than the Agency found for facilities with existing accumulation tank systems.

For example, EPA compared the incremental annualized cost for installing new tank systems in compliance with the proposed requirements to the model financial data for 100–1,000 kg/mo generator facilities to assess the potential impacts. The results indicate that, at most, two model firms, compared to six, may experience significant financial impacts as a result of complying with the new tank system requirements.

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TABLE I

Table I: Before-Tax Facility Cost Estimates of the Proposal for Small Quantity Generators with Hazardous Waste Accumulation Tanks

Facility Type	Estimated Facility Compliance Costs				
	capital	O&M (year cost incurred)	Annualized O&M	annualized capital plus O&M (before-tax)	(after-tax)
Two below ground tanks	$5,828	$1,600 (yr 1-7) 640 (yr 8-20)	$1,214	$1,959	$1,693
Two above ground tanks	565	900 (yr 1-8) 1,200 (yr 9-20)	1,004	1,076	918
One above ground and one below ground tank	3,882	2,050 (yr 1-7) 770 (yr 8) 920 (yr 9-20)	1,587	2,083	1,789

TABLE II

Table II: Before-Tax National Cost Estimates of the Proposal for Small Quantity Generators with Hazardous Waste Accumulation Tanks

Facility Type	Number of Facilities	Estimated National Compliance Costs				
		capital	O&M (year cost incurred)	Annualized O&M	annualized capital plus O&M (before-tax)	annualized capital plus O&M (after-tax)
		($ million)				
Two below ground tanks	4,935	$28.8	$7.9 (yr 1-7) 3.2 (yr 8-20)	$ 6.0	$ 9.7	$ 8.4
Two above ground tanks	4,745	2.7	4.3 (yr 1-8) 5.7 (yr 9-20)	4.7	5.1	4.4
One above ground and one below ground tank	1,708	6.6	3.5 (yr 1-7) 1.3 (yr 8) 1.6 (yr 9-20)	2.7	3.6	3.1
National Total	11,388	38.1	NA	13.5	18.4	15.9

TABLE III

Table III: Description of Small Quantity Generator Regulatory Alternatives for Proposal

Regulatory Scenario	Phase-In Age (years)	Daily Aboveground Tank Inspections	Recording Inspections	Aboveground Tank Integrity Assessments	Underground Tank and Piping Integrity Assessments	Corrosion Protection
(1) Proposal	15	yes	yes	annually	annually	yes
(2)	15	yes	no	no	no	no
(3)	15	yes	no	every 3 years	annually	no
(4)	15	yes	no	every 3 years	every 3 years	no
(5)	15	yes	no	every 5 years	every 5 years	no
(6)	15	yes	no	annually	annually	no
(7)	20	yes	yes	annually	annually	yes
(8)	20	yes	no	no	no	no
(9)	20	yes	no	every 3 years	annually	no
(10)	20	yes	no	every 3 years	every 3 years	no
(11)	20	yes	no	every 5 years	every 5 years	no
(12)	20	yes	no	annually	annually	no

TABLE IV

Table IV: Annualized Facility Cost Estimates of 11 Regulatory Alternatives Compared to the Annualized Facility Cost Estimate for the Proposal

	Regulatory Scenario Description	Estimated Total After-Tax Annualized Facility Cost: 2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(1)	Proposal: phase-in secondary containment at tank age 15, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	$1,693	$918	$1,789
(2)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks.	810	492	729
(3)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for above ground tanks) integrity assessments.	1,622	529	1,560
(4)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for under ground tanks and piping and above ground tanks.	1,081	529	1,018
(5)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and above ground tanks.	972	514	882
(6)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and above ground tanks.	1,622	603	1,585
(7)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	1,573	838	1,805
(8)	Phase-in secondary containment at tank age of 20 years old, daily inspections above ground tanks.	425	386	448
(9)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for aboveground tanks) integrity assessments.	1,539	434	1,586

TABLE IV (continued)

Table IV: Annualized Facility Cost Estimates of 11 Regulatory Alternatives Compared to the Annualized Facility Cost Estimate for the Proposal (continued)

Regulatory Scenario Description	Estimated Total After-Tax Annualized Facility Cost		
	2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(10) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for underground tanks and piping and above-ground tanks.	796	434	843
(11) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and aboveground tanks.	647	415	657
(12) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and aboveground tanks.	1,539	531	1,628

TABLE V

Table V: Before-Tax Installed Costs for New Carbon Steel Underground (UG) and Above Ground (AG) Tanks With Full Secondary Containment

Number and Type of Tanks(s)	Size of Tanks (gallons)	Cost of Tank Systems Without Secondary Containment			Cost of Tank Systems With Secondary Containment			Incremental Cost of Secondary Containment		
		initial	O&M	annualized	initial	O&M	annualized	initial	O&M	annualized
1 UG	200	$1,660	$000	$210	$7,310	$250	$1,190	$5,650	$250	$ 970
1 UG	550	2,170	000	280	9,140	250	1,420	6,970	250	1,140
1 AG	200	690	000	90	1,260	250	410	570	250	320
1 AG	550	1,480	000	190	2,160	250	530	680	250	340

NOTE: Costs for 200 gallon above ground and underground tanks are assumed to be the same as those for a 285 gallon above ground tank and a 275 gallon underground tank because such single-walled tanks are currently the smallest "off-the-shelf" tank sizes produced. Thus, the Agency expects such tanks to be more commonly used by the regulated SQG community than the calculated minimum 200 gallon tank size.

TABLE VI

Table VI: Economic Impacts for Small Quantity Generator Model Tank Facilities Under Alternative Regulatory Scenarios

	Regulatory Scenario Description	Number of Significantly Affected Model Facilities 1/		
		2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(1)	Proposal: phase-in secondary containment at tank age 15, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	5	0	6
(2)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks.	0	0	0
(3)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for above ground tanks) integrity assessments.	5	0	5
(4)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for under ground tanks and piping and above ground tanks.	1	0	0
(5)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and above ground tanks.	0	0	0
(6)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and above ground tanks.	5	0	5
(7)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	5	0	6
(8)	Phase-in secondary containment at tank age of 20 years old, daily inspections above ground tanks.	0	0	0
(9)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for aboveground tanks) integrity assessments.	5	0	5

1/ We examined 84 model firms representing medium and small firm sizes in 42 industries.

TABLE VI (continued)

Table VI: Economic Impacts for Small Quantity Generator Model Tank Facilities Under Alternative Regulatory Scenarios (continued)

Regulatory Scenario Description	Number of Significantly Affected Model Facilities 1/		
	2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(10) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for underground tanks and piping and above-ground tanks.	0	0	0
(11) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and aboveground tanks.	0	0	0
(12) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and aboveground tanks.	5	0	5

[FR Doc. 86-22684 Filed 10-8-86; 8:45 am]

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federal register

Thursday
October 9, 1986

Part III

Environmental Protection Agency

40 CFR Part 403

General Pretreatment Regulations for Existing and New Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL-3068-6]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending 40 CFR Part 403 Appendix D, which lists wastestreams that are considered to be dilute for purposes of using the combined wastestream formula in § 403.6(e). The Agency is promulgating these final revisions after considering comments received in response to the proposal published in the **Federal Register** on May 9, 1985 (50 FR 19664). Today's revision of the list is the first revision since the initial publication of Appendix D in the **Federal Register** on January 28, 1981 (46 FR 9404).

Pursuant to section 307(b) of the Clean Water Act ("CWA"), EPA has promulgated pretreatment standards regulating the introduction of pollutants into publicly owned treatment works (POTWs). These standards include sets of categorical standards that regulate specific process wastewater streams discharged by particular industrial categories. EPA has also promulgated the combined wastestream formula to apply these pretreatment standards to facilities that combine regulated process wastestreams with each other or with other wastestreams that are not covered by categorical pretreatment standards prior to treatment. To use the formula, wastestreams must be classified as either dilute, regulated or unregulated. The wastestreams that are to be considered dilute include those that are listed in 40 CFR Part 403, Appendix D.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 23, 1986. This regulation shall become effective on November 24, 1986.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: The supporting information and all comments on the earlier proposed rule are available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library), 401 M Street SW., Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph S. Vitalis, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Part 403, Appendix D. (202) 382-7172.

SUPPLEMENTARY INFORMATION: On June 26, 1978, EPA promulgated the General Pretreatment Regulations (40 CFR Part 403), establishing mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs) (43 FR 27736). EPA amended these regulations on January 28, 1981 (46 FR 9404), May 17, 1984 (49 FR 21024) and several other occasions not relevant to today's rulemaking.

Included among these regulations is the "combined wastestream formula", 40 CFR 403.6(e). This formula is used to apply categorical pretreatment standards to facilities that combine process wastestreams covered by categorical pretreatment standards with each other or with other wastestreams not covered by categorical pretreatment standards prior to treatment. These other wastestreams are divided into two groups, "dilute" and "unregulated", and are handled differently by the formula.

Dilute wastestreams are those generally considered to have no more than trace or non-detectable amounts of pollutants of concern, as discussed below. These waste streams include boiler blowdown, non-contact cooling water, sanitary wastewater, and process wastestreams that EPA has exempted or could have exempted from categorical pretreatment standards based upon a finding that these wastestreams do not contain more than trace or nondetectable amounts of pollutants of concern (Appendix D).

In some cases, wastestreams from boiler blowdown and non-contact cooling water system discharges may be considered unregulated process streams. A determination on whether the wastestream is regulated or dilute is to be made by the appropriate control authorities using factors discussed in the preamble published on May 17, 1984 (49 FR 21024).

Unregulated wastestreams are wastestreams that are neither covered by categorical pretreatment standards nor are dilute wastestreams. These are presumed, for purposes of applying the combined wastestream formula, to contain pollutants of concern at a significant level. "Unregulated" wastestreams include wastestreams for which a categorical pretreatment standard has been promulgated but for which the final compliance date has not yet been reached; those currently not subject to a categorical pretreatment standard (whether or not they will be in the future); or those that are not regulated for the pollutant in question even if they are regulated for others.

For more information on the use of the combined wastestream formula and the basis of its derivation, see the preamble discussions in 46 FR 9419-9423 (January 26, 1981) and 49 FR 21024-21038 (May 17, 1984). For sample applications of the formula, refer to the "Guidance Manual for Electroplating and Metal Finishing Pretreatment Standards" published by the Agency in February, 1984 and the "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula" published by the Agency in September, 1985.

To assist industrial facilities and their control authorities in determining which particular process wastestreams not covered by categorical pretreatment standards are "dilute" streams, EPA included in 40 CFR Part 403 Appendix D the list of industrial subcategories that have been or could have been exempted from regulation under the categorical pretreatment standards based on any of four criteria specified in Paragraph 8 of the Settlement Agreement in *Natural Resources Defense Council, Inc., et al.* v. *Costle*, 12 ERC 1833 (D.D.C. 1979), as modified. The specified criteria were:

(1) The pollutants of concern are not detectable (paragraph 8(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a) (iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); and

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)).

There are three additional criteria for excluding categories or subcategories under paragraph 8. These are:

(5) When equal or more stringent protection is already provided by a pretreatment standard promulgated by EPA (paragraph 8(a)(i));

(6) When the amount and toxicity of each pollutant in the discharge of a category or subcategory does not justify developing national regulations in accordance with the consent decree schedule (paragraph 8(a)(iv)); and

(7) When the toxicity and amount of incompatible pollutants introduced to a publicly-owned treatment works (POTW) is so insignificant as not to justify developing a pretreatment regulation in accordance with the consent decree schedule (paragraph 8(b)(ii)).

Because exclusions based on criteria (5), (6) and (7) above are not based upon determinations that these wastestreams are dilute, these criteria have not been used to develop the list in Appendix D.

Some wastestreams that were excluded from regulation based on criteria (5)–(7) are listed in Appendix D because the wastestreams also meet one or more of criteria (1)–(4) above and could have been excluded based on those criteria as well. EPA included such subcategories in Appendix D only after determining that one or more of criteria (1)–(4) above could also have been used as a basis for excluding the subcategory. See 46 FR at 9459 (January 28, 1981).

Today's revision of Appendix D serves two purposes. First, EPA is updating the list. In addition, EPA is correcting errors in the list. In implementing the pretreatment standards, the Agency has found that some subcategories had been placed on the list erroneously and others had been omitted by error. For example, in some cases, the Agency found that the basis for the Paragraph 8 exclusion was not one of the four criteria listed above. Rather, exclusion from regulation was based on one of the additional three criteria set forth in Paragraph 8 (e.g., the caustic and/or water wash subcategory of the Paint Formulating point source category had been excluded under paragraph 8(a)(iv) [criteria (5), above] because the amount and toxicity of the pollutants of concern do not justify developing national regulations on the schedule contained in the Decree). In such cases, the subcategory in issue has been deleted from Appendix D. In addition, further technical studies conducted by the Agency reorganized some industry categories and subcategories. Some of the newly designated subcategories do not qualify for the revised Appendix D list (e.g., Paint Formulating (40 CFR Part 446) and Ink Formulating (40 CFR Part 447) industries). Other changes that have been introduced are category or subcategory name changes. The change of *Foundries Industry to Metal Molding and Casting* is an example of this.

In still other cases, the Agency has, in fact, promulgated categorical pretreatment standards for certain subcategories (or operations) that have been erroneously listed on Appendix D. For example, chemical machining, immersion plating, pickling, bright dipping, iridite dipping, alkaline cleaning and galvanizing are regulated by the Electroplating and/or Metal Finishing standards (40 CFR Parts 413 and 433). Thus EPA is deleting them from this final Appendix D list.

The final Appendix D does not list the luminescent materials, sodium bicarbonate, sodium bisulfite, sodium sulfite and titanium dioxide subcategories. No PSES were promulgated for these subcategories because there were few or no existing dischargers. However, PSNS have been promulgated for these subcategories, based on our knowledge of direct dischargers. This reflects the fact that the wastestreams, when they do exist, do contain more than insignificant amounts of pollutants and would not have been exempted for any of the four specified criteria used to designate a "dilute" wastewater stream.

Finally, some subcategories should have been included and were not, such as groundwood-chemi-mechanical subcategory of the Pulp, Paper and Paperboard Point Source Category (40 CFR Part 430). Subcategories like the groundwood-chemi-mechanical subcategory are included on the final list because they could have been excluded under paragraph 8(a)(iii) (the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator).

Subcategories for the *Auto and Other Laundries* (40 CFR Part 444), shown in the proposed Appendix D list in 50 FR 19664 (May 9, 1985), have been modified to correspond more closely with the nine segments studied in 1981 and identified in the draft guidance document for this industry. The proposed car wash subcategory has been renamed Commercial Car Wash Establishments subcategory to narrow the coverage. Car washing of new cars at auto assembly plant facilities were not studied as part of the 1981–1982 project and were not intended to be included in this point source category. If new car washing at assembly plants is associated with the fabrication of car parts, these activities could be covered under the *Metal Finishing* (40 CFR Part 433) regulations. It should be noted that regulations for the Metal Finishing Category cover wastewater discharges from 46 unit operations, the six operations previously addressed by the Electroplating regulation, plus an additional 40 operations. If any of the six electroplating operations (electroplating, electroless plating, anodizing, coatings, etching & chemical milling and printed circuit board manufacturing) are present, then the Metal Finishing pretreatment regulations apply to wastewaters from any of the 46 listed metal finishing operations. Because the Car Wash Establishments subcategory was excluded from regulation under paragraph 8(a)(iv) and 8(b)(ii) by affidavit executed on December 7, 1981, the Car Wash Establishments subcategory is not included on the final Appendix D today. (See response to Comment 3.)

Several footnotes have been added to the final Appendix D list to clarify the applicability of certain listed items. Two point source categories, *Electrical and Electronic Components* (40 CFR Part 469) and *Rubber Manufacturing Category* (40 CFR Part 428) are handled this way. When electrical and electronic components manufacturing have operations that appropriately fit into the Electroplating (40 CFR Part 413) and/or Metal Finishing (40 CFR Part 433) pretreatment regulations, then these latter regulations apply. In the case of rubber manufacturing, wastewater streams from five subcategories are not considered dilute when certain types of production activity are present which generate measurable quantities of three toxic pollutants: Lead, chromium and zinc. Although there are no pretreatment standards for existing sources for rubber manufacturing, there are pretreatment standards for new sources for these five subcategories. Because new sources in these rubber manufacturing subcategories are regulated for three toxic pollutants, they should not be considered dilute for purposes of the combined wastestream formula. Furthermore, because it is unlikely that new sources would have a higher pollutant loading than existing sources, these same five rubber subcategories which are footnoted should be considered unregulated for existing sources rather than dilute in situations where the combined wastestream formula is applied.

Readers should note that Appendix D is to be used only for the purpose of applying the combined wastestream formula. It is not to be used by industrial users or regulatory authorities for the purpose of determining whether a particular industrial user is subject to, or exempt from, a particular categorical

pretreatment standard. To make such a determination, one should refer to the primary sources: the pretreatment standard, its preamble and development document, and other material in the rulemaking record for the standard. When substantial doubt arises after reviewing these materials, EPA's category determination procedures should be used. See 40 CFR 403.6(a), 46 FR 9404 (January 28, 1981).

Summary of Public Participation

At the time of publication of the proposed revision of Appendix D at 50 FR 19664 (May 9, 1985), the Agency solicited comments from all interested parties. The following parties submitted comments:

American Paper Institute (API)
National Forest Products Association (NFPA)
American Textile Manufacturers Institute, Inc.
Counsel for Laundry Cleaning Council
County of Onondaga, NY
Diamond Shamrock Corporation
Ford Motor Corporation
General Motors Corporation
Metropolitan Sanitary District of Chicago
Municipality of Metropolitan Seattle
Society of the Plastics Industry, Inc.

The major issues raised by commenters are addressed in this section. A summary of all comments received is included in the public record for this regulation. The Agency responses to all substantive comments are addressed in this preamble.

1. *Comment:* One commenter suggested that EPA further clarify the intent and scope of Appendix D. The commenter urged EPA ". . . to expand its discussion that removal from the Appendix D list *in no way* changes the subcategory exclusion as described in Paragraph 8."

In addition, the commenter questions why the proposal includes four subcategories on the Appendix D list and asks that they be omitted in the final list. The commenter points to 47 FR 52005 (November 18, 1982) Subpart L, the final rule for Pulp, Paper and Paperboard and Builder's Paper and Board Mills subcategories (40 CFR Parts 430 and 431) and notes that in the final rule, both existing and new source Groundwood-Chemi-Mechanical facilities are exempted under Paragraph 8(a)(iv) because "the amount and the toxicity of each pollutant in the discharge does not justify developing national regulations . . ." The commenter claims that EPA has erroneously proposed to include the Groundwood-Chemi-Mechanical subcategory of the Pulp, Paper, Paperboard and Converted Paper Industry category (40 CFR Part 430) on the dilute list, Appendix D.

For the other three subcategories: Barking Process, Finishing Processes and Hardboard—Dry Process subcategories under the Timber Products Point Source Category, the commenter argues that these process subcategories are excluded from further regulation under Paragraph 8(a)(i) as a result of the existing zero discharge BAT regulation and so should not be included in Appendix D.

Response: The purposes of this rulemaking, as correctly noted by the commenter, are to eliminate errors, both of inclusion and exclusion, and to update Appendix D. As noted above in this preamble, Appendix D of 40 CFR Part 403 represents a list of process wastestreams considered to be dilute only for the purpose of applying the combined wastestream formula. EPA has strived to compile this list to reflect accurately decisions that were made or could have been made under the four provisions of paragraph 8 of the Settlement Agreement. The list does not, however, alter any decision made under paragraph 8 and, moreover, is not the primary source for determing what those decisions were, as discussed above.

The Agency originally excluded the Ground-Chemi-Mechanical subcategory under Paragraph 8(a)(iii), stating, "Toxic pollutants that were detected in discharges from mills in this subcategory were detected in amounts too small to be effectively reduced by technologies known to the Administrator." See proposed rules for this industry in 46 FR 1446 (January 6, 1981). A later statement in 47 FR 52005 (November 18, 1982) that this subcategory is excluded from regulation under paragraph 8(a)(iv) is not in conflict with the earlier paragraph 8 exclusion. It is simply an additional reason to exclude subpart L. Therefore, the Agency will retain the Ground-Chemi-Mechanical subcategory on the Appendix D list.

The Agency has reviewed its proposal to retain three subcategories (Barking Process, Finishing Processes, and Hardboard-Dry Process) from the Timber Products Processing category (40 CFR Part 429) on the final Appendix D list. These three subcategories were originally excluded using paragraph 8(a)(iii) as well as 8(a)(i) in an affidavit signed by Assistant Administrator, Tom Jorling on May 10, 1979. With regard to the 8(a)(iii) rationale, the Jorling affidavit stated that the few pollutants present are in trace amounts and are not likely to cause toxic effects, and are present in amounts too small to be effectively reduced. Therefore, the Agency has decided to keep these three subcategories on the final Appendix D list issued today. Other subcategories (log washing, particle board, planing mills, saw mills, veneer, wet storage and wood preserving (inorganics process) placed on the 1981 Appendix D were based on paragraph 8(a)(i), 8(b)(ii) and 8(a)(iv); these subcategories are not included on the final Appendix D list. This means that only three subcategories from Timber Products Processing Category originally placed on the Appendix D list in 1981 will be retained.

2. *Comment:* One commenter took the position that the Industrial Laundries subcategory of the Auto and other Laundries Industry category (40 CFR Part 444) should not be on Appendix D because industrial laundries wastestreams do not meet any of the four reasons cited for exclusion used to define a dilute wastestreams. In addition, they stated that the large number of toxic pollutants discharged by this particular industry and the high concentration of many of these pollutants provides sufficient justification for including the industrial laundries subcategory in the EPA Categorical Pretreatment Program.

Response: The Agency excluded from regulation by categorical pretreatment standards all the subcategories in the Auto and Other Laundries Category including the industrial laundry subcategory. (The criteria used for these exclusions varied with the subcategories.) The industrial laundry subcategory was excluded from national regulation under the provisions of paragraph 8(b)(i) in an affidavit executed in December, 1981. Because paragraph 8(b)(i) is one of the criteria cited to identify dilute wastestreams and develop the Appendix D list, the May 1985 proposed revision to the list included the industrial laundries subcategory. The Agency has collected additional data on this industrial subcategory and is currently reexamining its decision not to promulgate categorical pretreatment standards for this subcategory. However, until a final regulatory decision has been made, the Agency will retain the industrial laundries subcategory on the Appendix D list, as proposed.

3. *Comment:* One commenter supported the Agency's proposal to add additional subcategories from the Auto and Other Laundries Category to the Appendix D list. The commenter claimed that while the volume of wastewater from subcategories in the

Auto and Other Laundries Industry is substantial, the wastewaters from these subcategories, with few exceptions, do not contain significant amounts of any priority pollutants. The commenter remarked that in those rare cases where wastewater from such a source has contributed significantly to discharge of a priority pollutant from a POTW, the discharge can be addressed effectively through the general pretreatment regulation and POTW pretreatment programs.

Response: See response to comment 2. We have determined that in three subcategories (power laundries, family and commercial; coin-operated laundries and dry cleaning; and carpet and upholstery cleaning), the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects. Although these three subcategories were originally excluded from categorical pretreatment regulation under paragraph 8(a)(iv), additional information indicates that the three subcategories could have been excluded from regulation under paragraph 8(a)(iii) because the pollutants of concern are present only in trace amounts and are either not causing or likely to cause toxic effects or are present in amounts too small to be effectively reduced by technologies known to the Administrator. The Agency, therefore, has retained them on the Appendix D list.

In addition, two other subcategories, diaper service and dry cleaners (which were on the 1981 Appendix D list and the proposed 1985 Appendix D list) are retained because these subcategories could have been excluded from regulation under paragraph 8(a)(iii) based on the same criteria used for the three subcategories above.

Two subcategories, linen supply and industrial laundries, both were on the 1985 proposed Appendix D list and are retained on today's final list. They were excluded from regulation pursuant to paragraph 8(b)(i).

The remaining subcategory, commercial car wash establishments, was excluded under paragraphs 8(a)(iv) and 8(b)(ii) and is not on the final Appendix D list today because these are not appropriate criteria for placement of this subcategory on the Appendix D list.

4. *Comment:* One commenter stated that EPA erred in failing to include all nine subcategories in the Textile Mills Category (40 CFR Part 410) on the Appendix D list. They cited Paragraph 6 of an affidavit the Agency executed on January 5, 1983 stating that the textile mills point source category was excluded from regulation because the toxicity and amount of incompatible pollutants discharged into POTWs was so insignificant as not to justify developing a pretreatment regulation pursuant to Paragraph 8(b)(ii).

Response: The Agency has not included six of the nine subcategories on the Appendix D list because process wastestreams from dischargers in these six subcategories contain above treatable levels of metals and are not dilute wastestreams. Moreover, Paragraph 8(b)(ii) is not one of the criteria used to determine dilute wastestreams for Appendix D. As discussed in the Preamble, Appendix D is a list of industrial subcategories that have been excluded, or could have been excluded from regulation by categorical pretreatment standards based on four specific criteria. None of the six textile wastestreams meets any of the four criteria cited.

The three subcategories that have been retained on the Appendix D list (apparel manufacturing; cordage and twine; and padding and upholstery filling) were excluded from regulation by categorical pretreatment regulation under paragraph 8(a)(iv). Because all three are dry processes and had zero discharges, they could have been exempted under paragraph 8(a)(iii) and, therefore, are still on Appendix D.

On the other hand, the low water use processing (Greige Mills) subcategory which was originally excluded from further categorical regulation development under paragraph 8(a)(iv) in the May 10, 1979 affidavit by Jorling and placed on the Appendix D list in January 1981 has been removed from the final Appendix D list today based on the Eidness affidavit executed on January 1, 1983. This affidavit states ". . . the Agency has decided that further regulation of the low water use processing subcategory is necessary and appropriate. The subcategory, therefore, is no longer being excluded from further regulation. The Agency has created a new water jet weaving subdivision in the low water use processing subcategory and has established BPT and BAT limitations and new source performance standards for this new water jet weaving subdivision."

5. *Comment:* One commenter requested EPA to discuss the coverage for carwash wastewaters included in the proposed changes for Appendix D and the applicability of the term "carwash."

Response: The data base assembled by the Agency for the "carwash" subcategory of the Auto & Other Laundries category (40 CFR Part 444) includes only sampling of commercial carwash facilities. Carwash facilities found in final line production facilities at automotive assembly plants were not sampled and it is not the Agency's intention to define or regulate assembly plant production carwash wastewaters as dilute. No "carwash" wastewaters are currently contained on Appendix D list.

Local control authorities are advised that assembly plant production carwash wastewaters may be regulated under categorical pretreatment standards for Metal Finishing (40 CFR Part 433), depending on the other types of production activity present at an automobile production facility.

6. *Comment:* One commenter questioned the listing on Appendix D of the subcategory "Insulating Devices—Plastic & Plastic Laminates" from the Electrical and Electronic category (40 CFR Part 469). They requested information on the industrial processes used, surveys and data which lead to the listing on Appendix D.

Response: In response, the Agency has reconsidered this listing and has as a result removed this subcategory from Appendix D. This subcategory is in fact not excluded under the Electrical and Electronics category but rather is covered by the Plastics Molding and Forming Point Source Category regulations (40 CFR Part 463). See 40 CFR 463.01), 49 FR 49026 (December 17, 1984) (regulating direct dischargers). At present, EPA is preparing regulations for the control of phthalates in indirect discharges in this category. To date, EPA has not excluded the subcategory, or determined that it could exclude the subcategory, for any of the four reasons used to establish the Appendix D listing.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This amendment does not impose any regulatory requirements. It merely provides information as to the nature of wastestreams to assist regulatory agencies and the regulated community in applying the combined wastestream formula. Consequently, this amendment does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare an initial regulatory flexibility analysis for all rules that have a significant impact on a substantial number of small entities. I hereby certify that this final rule will not have significant economic impact on a

substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 2, 1986.

Lee M. Thomas,

Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reason set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Secs. 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972), as amended by the Clean Water Act of (1977), (the "Act"); 33 U.S.C. 1311; 1314 (b), (c), (e), and (g); 1316 (b) and (c); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567; Pub. L. 95–217.

2. Part 403 is amended by revising Appendix D to read as follows:

Appendix D—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR Part 444)
- Carpet and Upholstery Cleaning
- Coin-Operated Laundries and Dry Cleaning
- Diaper Services
- Dry Cleaning Plants except Rug Cleaning
- Industrial Laundries
- Laundry and Garment Services, Not Elsewhere Classified
- Linen Supply
- Power Laundries, Family and Commercial

Electrical and Electronic Components [1] (40 CFR Part 469)
- Capacitors (Fluid Fill)
- Carbon and Graphite Products
- Dry Transformers
- Ferrite Electronic Devices
- Fixed Capacitors
- Fluorescent Lamps
- Fuel Cells
- Incandescent Lamps
- Magnetic Coatings
- Mica Paper Dielectric
- Motors, Generators, Alternators
- Receiving and Transmitting Tubes
- Resistance Heaters
- Resistors
- Switchgear
- Transformer (Fluid Fill)

Metal Molding and Casting (40 CFR Part 464)
- Nickel Casting
- Tin Casting
- Titanium Casting

Gum and Wood Chemicals (40 CFR Part 454)
- Char and Charcoal Briquets

Inorganic Chemicals Manufacturing (40 CFR Part 415)
- Ammonium Chloride
- Ammonium Hydroxide
- Barium Carbonate
- Calcium Carbonate
- Carbon Dioxide
- Carbon Monoxide and Byproduct Hydrogen
- Hydrochloric Acid
- Hydrogen Peroxide (Organic Process)
- Nitric Acid
- Oxygen and Nitrogen
- Potassium Iodide
- Sodium Chloride (Brine Mining Process)
- Sodium Hydrosulfide
- Sodium Hydrosulfite
- Sodium Metal
- Sodium Silicate
- Sodium Thiosulfate
- Sulfur Dioxide
- Sulfuric Acid

Leather (40 CFR Part 425)
- Gloves
- Luggage

Paving and Roofing (40 CFR Part 443)
- Asphalt Concrete
- Asphalt Emulsion
- Linoleum
- Printed Asphalt Felt
- Roofing

Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR Parts 430 and 431)
- Groundwood-Chemi-Mechanical

Rubber Manufacturing (40 CFR Part 428)
- Tire and Inner Tube Plants
- Emulsion Crumb Rubber
- Solution Crumb Rubber
- Latex Rubber
- Small-sized General Molded, Extruded and Fabricated Rubber Plants,[2]
- Medium-sided General Molded, Extruded and Fabricated Rubber Plants [2]
- Large-sized General Molded, Extruded and Fabricated Rubber Plants [2]
- Wet Digestion Reclaimed Rubber
- Pan, Dry Digestion, and Mechanical Reclaimed Rubber
- Latex Dipped, Latex-Extruded, and Latex-Molded Rubber [3]
- Latex Foam [4]

Soap and Detergent Manufacturing (40 CFR Part 417)
- Soap Manufacture by Batch Kettle
- Fatty Acid Manufacture by Fat Splitting
- Soap Manufacture by Fatty Acid Neutralization
- Glycerine Concentration
- Glycerine Distillation
- Manufacture of Soap Flakes and Powders
- Manufacture of Bar Soaps
- Manufacture of Liquid Soaps
- Manufacture of Spray Dried Detergents
- Manufacture of Liquid Detergents
- Manufacture of Dry Blended Detergents
- Manufacture of Drum Dried Detergents
- Manufacture of Detergent Bars and Cakes

Textile Mills (40 CFR Part 410)
- Apparel manufacturing
- Cordage and Twine
- Padding and Upholstery Filling

Timber Products Processing (40 CFR Part 429)
- Barking Process
- Finishing Processes
- Hardboard—Dry Process

[FR Doc. 86–22944 Filed 10–8–86; 8:45 am]

BILLING CODE 6560-50-M

[1] The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR Parts 413/433).

[2] Footnote: Except for production attributed to leadsheathed hose manufacturing operations.

[3] Footnote: Except for production attributed to chromic acid form-cleaning operations.

[4] Footnote: Except for production that generates zinc as a pollutant in discharge.

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LIST OF PUBLIC LAWS

Last List October 8, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 4260/Pub. L. 99-443

To provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes. (Oct. 6, 1986; 100 Stat. 1120; 1 page) Price: $1.00

H.J. Res. 710/Pub. L. 99-444

To designate the week beginning October 12, 1986, as "National Children's Television Awareness Week." (Oct. 6, 1986; 100 Stat. 1121; 1 page) Price: $1.00

S. 1542/Pub. L. 99-445

To amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System. (Oct. 6, 1986; 100 Stat. 1122; 2 pages) Price: $1.00

S.J. Res. 354/Pub. L. 99-446

To designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week." (Oct. 6, 1986; 100 Stat. 1124; 1 page) Price: $1.00

S.J. Res. 362/Pub. L. 99-447

To designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week." (Oct. 6, 1986; 100 Stat. 1125; 2 pages) Price: $1.00

S.J. Res. 405/Pub. L. 99-448

To designate September 11, 1987, as "9-1-1 Emergency Number Day." (Oct. 6, 1986; 100 Stat. 1127; 1 page) Price: $1.00

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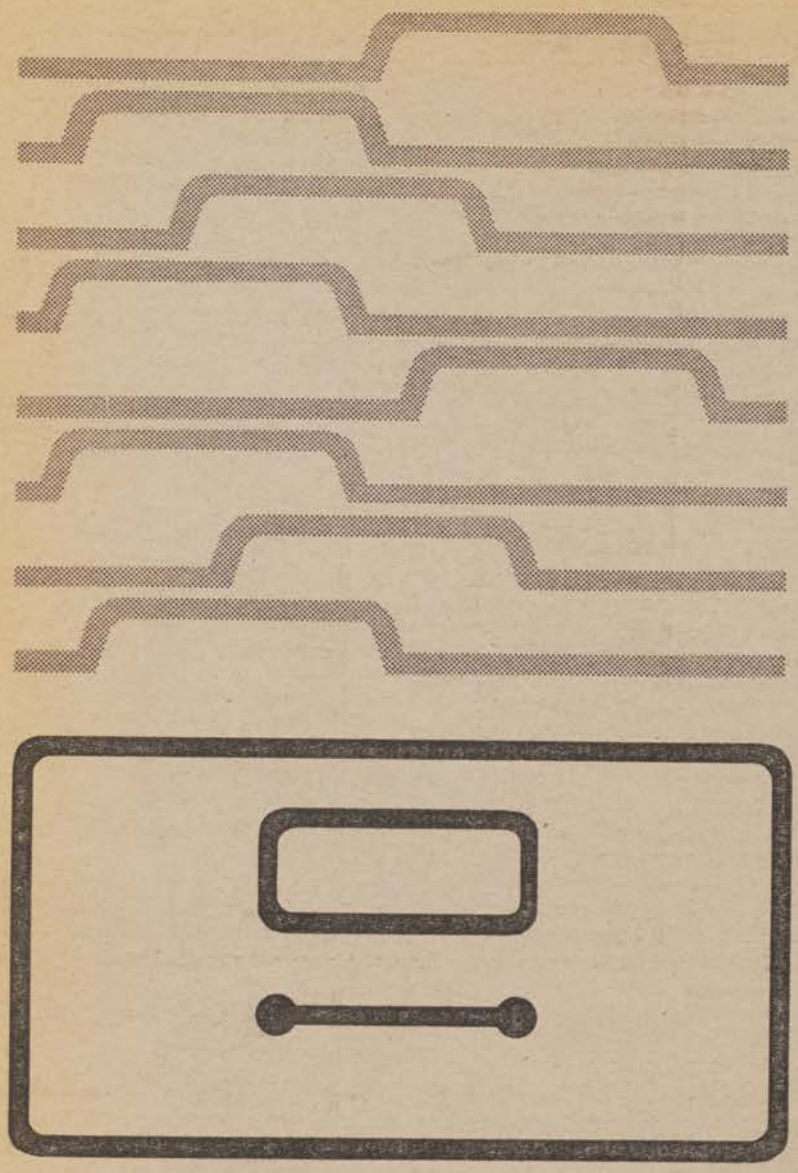

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